

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

: UNITED STATES OF AMERICA :
: :
: Plaintiff :
: :
: v. : 3:11-cr-00229-FAB
: :
: ALEXIS D. NEGRON CRUZ (1) :
: :
: Defendant :

PRELIMINARY REVOCATION HEARING

Was held Before HONORABLE MARCOS E. LOPEZ, U.S. MAGISTRATE
JUDGE sitting in San Juan, Puerto Rico, on February 12, 2024
at 9:26 a.m.

1 APPEARANCES:

2

3 FOR THE GOVERNMENT:

4 JENIFER HERNANDEZ, AUSA

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6 FOR DEFENDANT:

7 KEVIN LERMAN, AAFP

8 JOSEPH NISKAR, AAFP

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1 THE MAGISTRATE: Good morning.

2 MS. HERNANDEZ: Good morning, Your Honor.

3 MR. NISKAR: Good morning, Your Honor.

4 THE CLERK: You may be seated.

5 MR. NISKAR: We have a motion before we begin.

6 THE CLERK: Okay, but you don't have any

7 Ids?

8 MR. NISKAR: No, no.

9 THE MAGISTRATE: Counsel, I'm having some issues
10 with my computer that I can't connect with the system. I'm
11 trying to get that fixed as quickly as possible.

12 MR. NISKAR: Yes, Your Honor.

13 THE MAGISTRATE: Let's go ahead and call the case.

14 THE CLERK: Criminal Case number 11-229, United
15 States of America versus Alexis D. Negron Cruz for
16 Preliminary Revocation Hearing. On behalf of the government
17 is AUSA Jenifer Hernandez. On behalf of the defendant is
18 AAFP Joseph Niskar and AAFP Kevin Lerman. The defendant is
19 present in the courtroom, under custody and is being
20 assisted by a certified court interpreter.

21 THE MAGISTRATE: Good morning, Counsel. I'm sorry
22 that we had some delay. For some reason my computer was not
23 able to connect to the system but now it has been fixed.
24 So, let's proceed then. How many witnesses -- I believe the
25 last time you said you had one or maybe two.

1 MS. HERNANDEZ: Yes, Your Honor, that's correct.

2 THE MAGISTRATE: Okay, all right.

3 MR. NISKAR: Your Honor, we have a motion to make
4 before the Court begins with the preliminary hearing.

5 THE MAGISTRATE: Yes, go ahead.

6 MR. NISKAR: Your Honor, at this time we are asking
7 the Court to not interfere with Judge Besosa's order
8 requiring the government to respond to our motion for a stay
9 of these proceedings. As the Court is aware, a preliminary
10 revocation hearing was scheduled to begin last week. I
11 believe it was February 7.

12 We had motioned the District Court Judge to which this
13 case is assigned, Judge Besosa, following that preliminary
14 revocation hearing for a motion for a stay of proceedings
15 and Judge Besosa has ordered the government to respond to
16 that by February, I think it's the 21st is the date he set
17 for response from the government.

18 I think it's important to note that our motion did not
19 just simply ask for a stay of the final revocation hearing.
20 We asked for a stay of the entire revocation proceeding. He
21 stayed pending a decision or a resolution by the Circuit
22 Court of Appeals in this case regarding our motion to
23 prevent ex parte communications between the Probation
24 Officer and the Court.

25 Therefore, it's our belief that the District Court

1 Judge to which this case is assigned, Judge Besosa, has this
2 matter under consideration currently in that he has ordered
3 the government to respond and, therefore, we're asking that
4 the Court not force us to proceed with the preliminary
5 revocation hearing nor to interfere with the process that's
6 on appeal and we would ask that this matter be continued to
7 a date after the date for which the government has been
8 ordered to respond.

9 That motion was filed forthwith following after we left
10 the court on February 7th, we filed then two notice of
11 appeals with the Circuit Court regarding the Pre-Trial
12 detention of Mr. Negron Cruz as well as appealing the motion
13 for reconsideration as well.

14 We continue to object to defendant's Pre-Trial
15 detention as well. We don't believe that this Court would
16 have authority at this time even if we held a preliminary
17 hearing. As the Court noted, the Court was willing to
18 listen to other arguments following the completion of the
19 preliminary revocation hearing regarding conditions of
20 release for Mr. Negron Cruz but since this matter is now on
21 appeal, I think that that matter would also be out of your
22 hands as well.

23 THE MAGISTRATE: Well, you wish to address any of
24 these arguments?

25 MS. HERNANDEZ: Yes, Your Honor. I understand that

1 the order of the District Court indicated the last order
2 issue that the preliminary hearing would be held today. As
3 to the motion to stay and their request for ex parte
4 communications which is the issue that form our point of
5 view is not even right, nonetheless they've continued to
6 file motions in that regard and they did file a notice of
7 appeal that relates more to the final revocation hearing and
8 not to the preliminary hearing because at this stage there
9 has been no ex parte communications between the Probation
10 Office and the Magistrate Court.

11 Also going into the bail request, they continue to
12 indicate that there has been no proper procedure followed
13 and there's a probable cause determination that is pending
14 and that is why we are here today for the preliminary
15 hearing, so that the first stage, which is probable cause
16 relating to the motion, can be determined by the Court and
17 at that time we have that portion of the revocation hearing.

18 So, we are ready to proceed. Our witnesses are here.
19 We were ready to proceed in the last Court scheduling of
20 this hearing and at this time we would request to proceed
21 with the preliminary hearing as was indicated by the
22 District Court.

23 THE MAGISTRATE: Yeah, yeah. I agree in part and
24 disagree in part with the arguments raised by the defense.
25 As to the matter of conditions of release, I do concur with

1 what the defense has stated. I did express my openness that
2 once the preliminary revocation hearing was held, if the
3 defense wanted to either request a reconsideration or bring
4 additional arguments to my attention, that I would be
5 willing to address, to at least listen and evaluate those.

6 However, since then, the defense has filed a notice of
7 appeal regarding the detention. So, I believe that as to
8 that matter, because there is an appeal pending, there is --
9 the matter is not within my jurisdiction anymore.

10 So, of course, the defense has the right to proceed in
11 either way. I mean, if the defense does not wish, they
12 could have opted not to file a notice of appeal detention
13 order and request a reconsideration after this hearing was
14 over. The defense chose not to and that's their right.

15 If they want to appeal, they can appeal. So, as to the
16 matter of detention, I believe that that matter is right now
17 pending before Honorable Judge Besosa. In fact, I believe
18 that there is an order from the Court of Appeals that was
19 entered, it looks like today on the docket.

20 Basically directing the District Court to promptly
21 adjudicate defendant's appeal from the Magistrate Judge for
22 returning to interim for order of detention.

23 So, as to the points raised by the defense regarding
24 the matter of detention, I agree that at this moment
25 procedurally it is because the defendant voluntarily chose

1 to file a notice of appeal, the matter of detention. That
2 matter right now is before the attention of Judge Besosa and
3 not before me. So, as to that part, I agree.

4 As to the matter of the preliminary revocation hearing,
5 I will not postpone the preliminary revocation hearing. We
6 will proceed with the preliminary revocation hearing today.
7 I do not believe that we're interfering with Judge Besosa's
8 order.

9 He is aware that this preliminary revocation hearing is
10 scheduled for today. Had he wanted to stay this preliminary
11 revocation hearing, he could have explicitly said so in his
12 sound discretion. He chose not to, not to make any
13 expression as to that particular matter.

14 So, for those reasons, we will proceed today with the
15 preliminary revocation hearing. So, for those reasons I
16 agree in part and disagree in part with the arguments made
17 by the defense. So -

18 MR. NISKAR: Your Honor, we would ask for a short
19 continuance so we can appeal this decision of the Court as
20 well, the refusal of the stay.

21 THE MAGISTRATE: Denied.

22 MR. NISKAR: Okay.

23 THE MAGISTRATE: You may call your first witness.

24 MR. NISKAR: Before we begin, may I also ask the
25 Court to make a record of something into support what Ms.

1 Hernandez stated. She seems to have information that the
2 Court has had no ex parte communications with the Probation
3 Officer.

4 I don't know how Ms. Hernandez knows that but may we
5 ask the Court whether the Court, Your Honor in particular,
6 has had any ex parte communications with Mr. Lozada since
7 the filing of the informative motion in this case regarding
8 the allegations that are contained in the motion.

9 THE MAGISTRATE: I can tell you categorically and
10 without hesitation, absolutely not. Not only I have not had
11 any conversations with Officer Lozada ex parte about this
12 case. I have also not had any conversations with AUSA
13 Hernandez ex parte about this case.

14 MR. NISKAR: Okay, so I don't know how Ms.
15 Hernandez knew that but she seemed to have that information
16 then. So, we wanted --

17 MS. HERNANDEZ: We don't like the implications. We
18 are aware of how the system works relating to the
19 preliminary hearings when there is a probable cause
20 determination. Generally Magistrates have no communications
21 relating to that probable cause determination and that is
22 the point where we're at.

23 THE MAGISTRATE: Well in any event, regardless,
24 regardless --

25 MR. NISKAR: Thank you, Your Honor.

1 THE MAGISTRATE: Regardless. Just to be and again
2 I want to be categorical about this. I think I have been
3 crystal clear. I have not, since we had the hearing, when
4 was it last week, I believe. Let me try to check here in
5 the calendar when is it that we met last time. I think that
6 we met last time I believe on the 7th of February.

7 I have not had any conversation whatsoever about this
8 case with AUSA Hernandez or with Officer Lozada.

9 MR. NISKAR: Since the filing of the informative
10 motion by the Probation, not just since February 7.

11 THE MAGISTRATE: Since the filing of that motion
12 and also including also the -- but, yes, since the filing of
13 the motion.

14 MR. NISKAR: Okay, thank you.

15 THE MAGISTRATE: Let me put it to you this way.
16 Since I came into this case for the very first time for this
17 revocation proceeding is what I mean. When I was brought
18 into this case for the very first time for these revocation
19 proceedings, since then I have not had any conversation with
20 AUSA Hernandez or with Officer Lozada about this case.

21 MR. LERMAN: Judge Lopez, if I may respectfully,
22 just because I represent Mr. Negron Cruz on the Appellate
23 cases as well, and we need to make our record crystal clear
24 regarding the issue with the Court's decision to proceed
25 notwithstanding the pending emergency request to stay these

1 proceedings and I'd like to just make three points for the
2 record.

3 The first is, there's no right of action for the
4 government that would justify the government insisting to
5 proceed over objection with this preliminary hearing. The
6 right to a prompt hearing under Morrissey, under Canon,
7 under Rule 32.1, those are rights held exclusively by the
8 accused, exclusively.

9 The government has not stated any basis for forcing the
10 hearing to go forward, for insisting. The government stated
11 basis appears to be because the government is ready. Second
12 and relatedly, the government hasn't stated any basis on the
13 merits to oppose the stay.

14 So, the government has been ordered to respond. The
15 government hasn't provided a response to our initial motion
16 to preclude ex parte communication. The government hasn't
17 opposed these on the merits. One of the things that we
18 wrote to the Circuit in the emergency request release this
19 weekend is that the U.S. Attorney also has concerns about
20 local Rule 132.1 which prohibits officers like Mr. Lozada
21 from disclosing any of his ex parte communication.

22 So that puts Officer Lozada in a position where he
23 would be in contempt of court if he even disclosed the
24 nature of any ex parte communication. So, that deals with
25 the issue here.

1 Our issue is not -- we're not alleging in any of our
2 pleadings, we're not alleging misconduct by any individual
3 person. There's a problem with the process. Again, as we
4 indicated to the First Circuit, there's a problem with the
5 process where there's a practice that allows a fact witness
6 and I'd like to repeat our objection, who's been allowed to
7 listen to all of these proceedings and has continued to file
8 -- I'm sorry, has filed an unsworn response to one of our
9 motions with factual allegations.

10 The combination of these factors makes it so there's no
11 possibility that a fair process can proceed and so the
12 moment this Court initiates the preliminary hearing, it has
13 one, interfered at the government's request, we understand.
14 Interfered with the same application that's under
15 consideration, the emergency stay application which we filed
16 and we greatly appreciate the Court's quick turnaround on
17 this continuance and the Court's response to our motion that
18 we do object, that we lodged on February 7th; that we object
19 to a continuance without a date, an indefinite continuance,
20 but we don't understand why a stay motion that is filed
21 emergency that has to be adjudicated promptly has not only
22 not been adjudicated but hasn't been responded to by the
23 government.

24 So, in a sense, there's an unopposed motion to stay
25 these proceedings pending and the overriding of those

1 proceedings by allowing the government to proceed with
2 actions that it has no right.

3 All of the actions are as a matter of right, are rights
4 that are held by Mr. Negron. So, if this Court continues
5 this proceeding, we have a due date for the response to the
6 stay which is this month. It should be earlier and as Mr.
7 Niskar objected, we objected to continued incarceration but
8 the Court is wishing to hold the preliminary hearing that
9 will have no bearing on its detention consideration.

10 So, that makes it doubly wrong to proceed as if the
11 government is an ordinary party and this is somehow some
12 sort of, you know, two parties on equal footing like it's a
13 civil case, and they have a right to go forward and they
14 have a right to go forward with a preliminary hearing which
15 the Supreme Court put in place to prevent prolonged
16 detention.

17 So, that's to vindicate a right. So, there's a process
18 to vindicate a right. It doesn't vindicate anything to
19 proceed and no one, no one will be harmed. The government
20 has not alleged any harm or responded to our position that
21 Mr. Negron would be irreparably harmed if the proceedings
22 continue with the current process in place and so, we do
23 lodge those and in fact if I would "atreverme", if I would
24 ask the Court to reconsider the decision to proceed based on
25 these objections.

1 THE MAGISTRATE: Your objections are duly noted for
2 the record. We will proceed with the preliminary revocation
3 hearing. You may call your first witness.

4 MS. HERNANDEZ: Yes, Your Honor.

5 THE MAGISTRATE: The objection is overruled.
6 Again, if either the -- I cannot speak. I cannot speak for
7 the Circuit. I cannot speak for Honorable Judge Besosa but
8 the record is clear in terms of when the preliminary
9 revocation hearing is scheduled to be held.

10 I have not seen an order staying the proceedings as of
11 today from either the Circuit or from Honorable Judge
12 Besosa. So, respectfully the objections are overruled and
13 we'll proceed. Who is your first witness?

14 MS. HERNANDEZ: Yes, Your Honor. The United States
15 will call to the stand Probation Officer Jose Lozada.

16 THE MAGISTRATE: Very well.

17 MS. HERNANDEZ: Your Honor, since we are calling
18 this witness to the stand, we also want to make the record
19 clear that after the last hearing we did inform defense
20 counsel that we understood that there were some cronos that
21 the Probation Officer had prepared for the Court or as part
22 of the documentation relating to their own records and that
23 they would have to file a motion as the procedure to obtain
24 those cronos to obtain a court order relating to those.

25 They were so informed. So before the witness takes the

1 stand, that would be the only, I understand, written product
2 other than the motion that was filed that was prepared by
3 the witness. So, we want to make that clear on the record.

4 THE MAGISTRATE: Do you have an objection that the
5 defense see the cronos?

6 MS. HERNANDEZ: If the defense makes the request
7 and the Court orders, we have not -- we don't have an
8 objection. We just wanted to indicate what the procedure is
9 in relation to obtaining cronos.

10 MR. NISKAR: Your Honor, there's a separate
11 procedure for obtaining cronos that has to do Jencks and
12 we've made a previous request for Jencks.

13 We were notified by the government that they would be
14 providing us Jencks of their witnesses. To date we have not
15 received any Jencks. We haven't seen those statements.

16 THE MAGISTRATE: So, can I understand that the
17 cronos will be the only Jencks?

18 MS. HERNANDEZ: Yes, Your Honor.

19 THE MAGISTRATE: Okay.

20 MS. HERNANDEZ: The motions that are already on the
21 record that the witness prepared.

22 MR. NISKAR: Then we would ask for a continuance
23 after the direct examination of Mr. Lozada to review the
24 cronos and prepare cross examination.

25 THE MAGISTRATE: How lengthy are these?

1 MR. LOZADA: I'm sorry?

2 THE MAGISTRATE: How lengthy are these?

3 MR. LOZADA: There are three cronos.

4 THE MAGISTRATE: Yes, but it has three pages?

5 MR. LOZADA: Yes.

6 THE MAGISTRATE: Three pages, okay. Well, then
7 here is what we're going to do. Since there's no objection
8 from the government before he starts right now, I'll wait
9 right here. Look at it -- you know, I don't appreciate when
10 I'm talking that you folks are talking to each other. Okay,
11 I would appreciate it if you pay attention.

12 MR. NISKAR: We are, Your Honor. We are listening.
13 We are paying attention.

14 THE MAGISTRATE: Yes, well, if you're talking to
15 each other, you're not listening to me. So, please provide
16 the three pages right now. I'll wait right here. Please
17 examine them right now so that they can have access to that
18 right now and that way we don't have to delay the
19 proceedings any further. Take a moment. I'll wait right
20 here.

21 MR. NISKAR: Your Honor, we're going to need about
22 fifteen minutes to review these cronos.

23 THE MAGISTRATE: I'll wait right here.

24 MR. NISKAR: Thank you. Okay, thank you, Your
25 Honor, we're ready.

1 THE MAGISTRATE: Okay, all right, let the record
2 reflect that Officer Lozada provided copies of the cronos to
3 defense counsel and they have been given an opportunity to
4 examine those documents. So, AUSA Hernandez, I believe you
5 had called Officer Lozada to the stand.

6 MS. HERNANDEZ: Yes, Your Honor.

7 THE MAGISTRATE: Let's place the witness under
8 oath.

9 (The witness was duly sworn)

10 THE MAGISTRATE: Let's have a seat. Sir, if you
11 could please have the microphone closer towards you so that
12 that way we can hear you better. Your witness for direct
13 examination.

14 Whereupon,

15 JOSE LOZADA

16 was called as a witness and after having been first duly
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. HERNANDEZ:

20 Q May you please state your full name for the record.

21 A Jose Lozada.

22 Q How are you currently employed?

23 A I'm currently employed by the United States Probation
24 Office.

25 Q In what position?

1 A As a U.S. Probation Officer.

2 Q Since when have you been working with the United States
3 Probation Office?

4 A Ten years approximately.

5 Q In what Probation Office do you work?

6 A The District of Puerto Rico.

7 Q What are your duties and obligations in that position?

8 A As a Probation Officer my main duties are to supervise
9 persons under supervision and seek them guidance, assistance
10 to re-entry into the community after incarceration, notify
11 any violations of supervision conditions to the Court.

12 Q Currently in what group within Probation Office do you
13 work?

14 A I work in the Supervision Division.

15 Q The Supervision Division relating to defendants who are
16 at what stage?

17 A The specific unit that I work in supervision are
18 persons that are convicted and were released from
19 imprisonment after a sentence and are on supervised release
20 term.

21 Q As part of your current duties and obligations, do you
22 supervise an individual by the name of Alexis Negron Cruz?

23 A That is correct.

24 Q Do you see that person in this courtroom here today?

25 A Yes.

1 Q Can you please signal the person and indicate an item
2 of clothing.

3 A Yes, he's sitting in the defense attorney to my right
4 wearing a khaki jumpsuit.

5 Q Can you point to that person?

6 A Yes.

7 MS. HERNANDEZ: Let the record reflect that the
8 defendant has been identified by the Probation Officer.

9 THE MAGISTRATE: The record shall so reflect.

10 BY MS. HERNANDEZ:

11 Q Now, since when do you supervise Alexis Negron Cruz?

12 A November 9, 2023.

13 Q Prior to November 9, 2023, had you supervised Alexis
14 Negron before?

15 A No.

16 Q What is the offense of conviction for Alexis Negron
17 Cruz?

18 A Possession of child pornography.

19 Q What was the last judgement or sentence imposed
20 relating to Jose Lozada?

21 A I'm sorry?

22 Q What was the last judgement or sentence imposed upon
23 Jose Lozada for which you enter into his supervision?

24 A My supervision was based on a prior revocation.

25 MS. HERNANDEZ: Your Honor, we would file. We

1 request that the Court take notice of the last judgement
2 issued on November 9, 2023 which is docket 429 of this
3 criminal case docket.

4 THE MAGISTRATE: Just give me a moment. I'm going
5 to docket 429 at this moment. Just give me a second.

6 MS. HERNANDEZ: To clarify, we're saying the
7 supervision of Alexis Negrón Cruz, the judgement relating to
8 him.

9 THE MAGISTRATE: I do take notice of the judgement
10 on revocation that appears in docket 429.

11 BY MS. HERNANDEZ:

12 Q Now, when you entered into supervision which you
13 indicated was November 9, 2023, where was Alexis Negrón Cruz
14 residing?

15 A After he was revoked, his last revocation, the
16 defendant was homeless and he was placed in Guarabi in
17 Caguas. It's a temporary transitional home that the United
18 States Probation Office pays for persons that are homeless
19 for a short term of period.

20 Q Okay, and calling your attention to November 15, 2023,
21 what happened that day?

22 A That day I went with my field partner to go visit Mr.
23 Alexis Negrón and at that time when we were about to enter
24 his room, he was alone there. He was in his room and we
25 approached to do what we call a home inspection. It's just

1 a brief home inspection of where he resides.

2 So, after doing the home inspection, I noticed a little
3 black box similar to an internet hot spot in which he was
4 confronted about that. He admitted that he was having
5 internet access through that hot spot and that hot spot
6 would supply internet to his T.V. and his Xbox cable
7 console. So after that --

8 THE MAGISTRATE: I'm sorry, Officer. Could you
9 repeat what you just said. He had access to the T.V. and to
10 what, did you say?

11 THE WITNESS: To a gaming console, an Xbox.

12 THE MAGISTRATE: You may proceed.

13 THE WITNESS: After that we start the case with
14 Supervisor Orlando Rullan, based on plain view hunter bag,
15 that is the hot spot, to activate the search condition that
16 Mr. Negron Cruz has under his revocation judgement.

17 As we -- well it was reasonable suspicious that a
18 violation was committed by Mr. Negron Cruz.

19 BY MS. HERNANDEZ:

20 Q Which violation would this be?

21 A Possession of internet access or a device that was
22 capable to connect to the internet.

23 Q Is that special condition 32?

24 A That's correct.

25 MS. HERNANDEZ: And for purposes of the record,

1 since the Court has taken notice of the judgement, the
2 special condition number 32 is, "he shall not possess or use
3 a computer, cellular telephone or any other device with
4 internet accessing capability at any time and place other
5 than those with systems that will enable the Probation
6 Officer or his or her designee to monitor and filter any
7 internet accessing."

8 THE MAGISTRATE: Where are you reading from?

9 MS. HERNANDEZ: That is special condition number 32
10 relating to the judgement of conviction, Your Honor.

11 THE MAGISTRATE: Okay. See but I think precision
12 matters. Are you referring to the original underlying
13 conviction or are you referring to the judgement of
14 revocation? Where are you reading from? Which of the two
15 judgements are you reading from?

16 MS. HERNANDEZ: Yes, Your Honor. It is special
17 condition number 2 that would be applicable to the original
18 judgement and to the last judgement that was imposed because
19 the special conditions throughout the judgements have
20 remained the same.

21 In particular, that condition is also indicated in
22 document 439, which is the motion that was filed by the
23 Probation Office and is part of the docket.

24 THE MAGISTRATE: Hold on, hold on. I want to see
25 special condition - did you say 2 or 32?

1 MS. HERNANDEZ: Special condition number 32.

2 THE MAGISTRATE: 32, okay. So, you may proceed.

3 BY MS. HERNANDEZ:

4 Q Now, you indicated that day that you were accompanied
5 by a another field officer, is that correct?

6 A It is correct.

7 Q Who is that?

8 A Officer Coralys Guzman.

9 Q Did she arrive with you to this home visit?

10 A Yes.

11 Q Okay and you may continue indicating what you observed
12 and how you proceeded to search.

13 A So, after we start with our supervisor, Orlando Rullan,
14 he started with senior management and it was determined that
15 reasonable suspicious was -- it was reasonable suspicious
16 enough to activate the search condition.

17 So, I asked Mr. Negron Cruz to step out of his room for
18 safety purposes and in order to activate the conditions and
19 at the beginning he refused to do so but after explaining to
20 him the condition, he stated that "you cannot search the
21 room, only plain view", and I explained to him that the
22 search condition was going to be activated that is on his
23 judgement and the same we can search more than just simple
24 plain view.

25 Q At that point in time what was the attitude of Alexis

1 Negron?

2 A He was very defiant. He stated on multiple occasions
3 that he does not agree with the conditions of supervision.
4 I tried to do what we call a role clarification; that we
5 clarify roles as to this particular supervision but he was
6 not able to -- he didn't want to --

7 MR. LERMAN: Objection, Your Honor. Objection.
8 It's speculation about what he was able to do or wanted to
9 do and we also object the officer appears to be transmitting
10 uncertified translations. It haven't been vetted and we
11 have information and belief that at least some of these
12 alleged statements in what has been turned over aren't
13 accurate and the misleading translations.

14 THE MAGISTRATE: Well, sustained in part and
15 overruled in part. As to the latter, regarding the
16 statements, I think that's fair grounds for cross
17 examination.

18 As to the former, I'm going to sustain your
19 objection because statements like, "well, he did not want
20 to", well, AUSA Hernandez, you would need to lay the
21 foundation for that. I mean, where is this based from? Was
22 it a statement made or was this something else? In other
23 words, he's not here to give interpretations but rather to
24 testify about facts.

25 So, you can cover this area in your direct examination

1 but you have to lay the foundation. You know, you cannot
2 just simply jump to a conclusion that the defendant did not
3 want to do X, Y, Z.

4 MS. HERNANDEZ: I understood that he was explaining
5 his interaction directly with the defendant and the --

6 THE MAGISTRATE: Well, but I think that the defense
7 has raised a fair, a fair objection in that regard. I think
8 just lay the foundation in terms of what did this officer
9 said and what was said to him and then the parties are free
10 to argue to the Court any reasonable inferences that can be
11 drawn.

12 So, again you're not precluded from covering this area
13 in your examination but you do need to lay the foundation
14 for the statements that he's making. Go ahead.

15 BY MS. HERNANDEZ:

16 Q Officer Lozada, if you can explain the interaction that
17 you particularly had with Alexis Negron, at the moment and
18 time when you were going to commence the search.

19 A He initially didn't want me to search the room and he
20 stated that only plain view search was the only way to do
21 it. I explained to him the conditions of the search and
22 asked him to step away from the room or outside the room.

23 Q What happened at that moment?

24 A Initially he didn't want to step outside the room --

25 MR. LERMAN: Same objection, Your Honor.

1 THE MAGISTRATE: Rephrase.

2 THE WITNESS: He initially refused to step outside
3 the room and after explaining the search condition, he
4 complied and stepped outside the room.

5 BY MS. HERNANDEZ:

6 Q When you say that he refused, what led you to
7 understand he was refusing?

8 A I'm sorry?

9 Q When you say he refused to step out of the room, why
10 do you say this?

11 A Because he said, "I'm not going to step outside the
12 room."

13 Q So, was there actually a verbal communication in
14 relating to his refusal to step out of the room?

15 A Yes.

16 Q What happened next?

17 A After he stepped outside the room with Officer Guzman,
18 before commencing the search, I asked him if he had a cell
19 phone device or another electronic device before commencing
20 the search in which he admitted that he had a smartphone
21 device hidden in a blue laundry basket.

22 MR. LERMAN: Objection, Your Honor. Objection.
23 It's the expression of a legal opinion to describe something
24 that somebody admitting something and this is not the
25 communication of something that was seen or heard. It's

1 beyond fact witness testimony.

2 THE MAGISTRATE: Overruled. You may proceed.

3 BY MS. HERNANDEZ:

4 Q What did you proceed to do?

5 A So, I proceeded to search the room, especially after he
6 stated that there was a smartphone in said area. I said,
7 "search that blue laundry basket" and there was a smartphone
8 device there.

9 Q When you say a smartphone, what are you referring to?

10 A So a smartphone device with access to the internet.

11 MR. LERMAN: Objection, Your Honor, foundation.

12 BY MS. HERNANDEZ:

13 Q Why do you call it -

14 THE MAGISTRATE: Well, he was defining what does he
15 mean by the term smartphone. So, if you wish to cross
16 examine him on that particular definition, you may do so.
17 You may proceed.

18 BY MS. HERNANDEZ:

19 Q When you mentioned the word smartphone, did there
20 come a time where you actually seized the phone?

21 A Yes.

22 Q What type of phone was it?

23 A It was an Android smartphone and I checked the same
24 and it had access to the internet.

25 Q Now -

1 MR. LERMAN: Same objection, Your Honor, lack of
2 foundation.

3 THE MAGISTRATE: Overruled.

4 BY MS. HERNANDEZ:

5 Q I am showing you what has been marked as Government's
6 Identification 1 through 9. If we may approach, Your Honor.

7 THE MAGISTRATE: You may. Now, do you want to hand
8 only Id-1 or are you handing Id-1 through 9?

9 MS. HERNANDEZ: We're handing Identifications 1
10 through 9.

11 THE MAGISTRATE: You may approach the witness.

12 MR. LERMAN: Objection, Your Honor, foundation.

13 THE MAGISTRATE: Well but they're not admitted yet
14 into evidence. They're Ids. So, I will allow the witness
15 to examine Ids 1 through 9. Of course, if the defense and
16 the government wish to use the document projector at some
17 point, you're free to use it. But if you prefer to do it
18 the traditional way, that's fine, too, whichever way you
19 prefer.

20 Let the record reflect that the witness has been handed
21 Id number 1 through Id number 9.

22 BY MS. HERNANDEZ:

23 Q Have you had an opportunity to examine them? Do you
24 recognize them?

25 A Yes.

1 Q What do you recognize them to be?

2 A I took those pictures. I recognize that those pictures
3 were taken in Mr. Negron Cruz' room at Carib Guarabi.

4 Q On what day?

5 A On November 15, 2023.

6 Q Are they an accurate depiction of what you observed
7 and took pictures of that day?

8 A Yes, I observed what I see in the pictures. It's the
9 little black box capable --

10 Q Without entering into the contents of the same.

11 A Oh, yes.

12 MS. HERNANDEZ: Your Honor, at this time we would
13 request that Identifications 1 through 9 be marked as
14 Government's Exhibits.

15 THE MAGISTRATE: Is there any objection to their
16 admissibility?

17 MR. LERMAN: Your Honor, we don't have any
18 indication to confirm whether those were actually -- that
19 those are depicted as they were taken. We would note that
20 each one of those pictures has a white sort of rim around it
21 where it appears that whatever actual original photos were
22 taken were copy and pasted into some other document format.

23 So, we don't have a date when those were taken and
24 there's an allegation that this search was pursuant to a
25 reasonable suspicion. So we don't have -- the Court is not

1 going to have any way to confirm the order in which those
2 were taken or to confirm whether the pictures were actually
3 modified since they were actually taken on whatever device.

4 We don't know what device they were taken on and we
5 don't know what processing they went through after.

6 Ordinarily that wouldn't be an issue. You're just taking a
7 picture of some stuff in a hamper. We understand it
8 shouldn't be a big issue but given the timing and a lot of
9 the very subjective nature of the allegations here, we do
10 object until we can be -- unless the government has some
11 more information about these, the actual photos that were
12 taken, not whatever has been printed onto some other file
13 type.

14 THE MAGISTRATE: The objection is overruled except
15 for one point. You are raising an objection that as to
16 whether they have been modified or altered in any way. So,
17 all the other arguments, the objection is overruled but as
18 to that particular specific objection, AUSA Hernandez,
19 please advise the witness as to that particular objection.

20 BY MS. HERNANDEZ:

21 Q Officer Lozada, how did you take these pictures?

22 A With my cell phone.

23 Q Okay and did you have an electronic copy of those
24 images?

25 A I have them on my cell phone and I sent them through

1 e-mail, to my e-mail.

2 Q Those that you have before you, are they an exact copy
3 of the images that you printed?

4 A Yes, they are.

5 Q Have they been modified or altered in any way, shape
6 or form?

7 A No.

8 MR. LERMAN: Objection, Your Honor. He doesn't
9 have the foundation -- there's no foundation laid for him to
10 make that determination of whether they're the same thing.
11 He may have used programs that modified them and that
12 foundation hasn't been laid.

13 THE MAGISTRATE: The objection is overruled.
14 They're admitted into evidence as Exhibits 1 through 9.

15 (Government's Exhibits 1 through 9
16 admitted into evidence)

17 MS. HERNANDEZ: May we publish, Your Honor?

18 THE MAGISTRATE: Yes, you may. Now, if you don't
19 mind -- if they don't have -- if they haven't been labeled
20 yet as with the Exhibit stickers, they might have Id
21 stickers but exhibit stickers, if they don't have them,
22 please approach for a moment to the lower bench so that the
23 Courtroom Deputy Clerk can place the exhibit labels on them.

24 BY MS. HERNANDEZ:

25 Q I'm showing you what has been marked as Government's

1 Exhibit 1. Can you explain and describe what we see here.

2 A It's a little black box. It's the hot spot that
3 provides internet to other devices.

4 Q Where was this located?

5 A Inside the defendant's room in Guarabi.

6 Q Looking at Government's Exhibit 2.

7 A It's a the same hot spot with a different picture
8 taken.

9 Q What is underneath the same?

10 A There's a battery charger for the Xbox gaming console.

11 Q Was this connected?

12 A Yes.

13 Q Government Exhibit number 3.

14 A Yes, the same. It has a battery charger and a charging
15 docking station for the Xbox gaming console controls.

16 Q Government's Exhibit number 4.

17 A A cell phone charger cable.

18 Q Can you circle what you're identifying.

19 A A black cell phone charging cable.

20 Q Was that charging cable compatible with any of the
21 other items that were seized?

22 A Yes.

23 Q With which one?

24 A With the cell phone smartphones that it was seized
25 that day.

1 Q Okay.

2 THE MAGISTRATE: I'm sorry. What was that cable?

3 THE WITNESS: Cell phone charger cable.

4 THE MAGISTRATE: You may proceed.

5 BY MR. HERNANDEZ:

6 Q Government Exhibit number 5.

7 A That's the blue laundry basket that the cell phone was
8 inside.

9 Q Where is that located within the room?

10 A Can I circle?

11 Q Yes. In what location is that within the room? What
12 part of the room is this?

13 A It's a small room, so it's right to the left when you
14 enter the room in this corner.

15 Q Can you describe what's above it.

16 A It's a small closet.

17 Q Looking at Government's Exhibit number 6.

18 A That's the blue laundry basket and inside is the seized
19 smartphone.

20 Q Can you circle. Government's Exhibit number 7.

21 A Those is a tablet. After reviewing that tablet, the
22 same is not capable to connect to the internet as it's owned
23 by the Bureau of Prisons.

24 Q Government's Exhibit number 8.

25 A The same tablet, just a picture of the back of the

1 tablet.

2 Q So, we have also here Government's Exhibit number 9.

3 What is this?

4 A It's a small basket and inside it has the cell phone,
5 the smartphone cell phone box.

6 Q Can you circle.

7 MR. LERMAN: Objection, Your Honor, relevance for
8 that photo.

9 THE MAGISTRATE: Well, overruled.

10 BY MS. HERNANDEZ:

11 Q Where was the location of this box?

12 A It was on the bottom of the blue laundry basket.

13 Q What were those items that you just circled?

14 A Smartphone, cell phone's boxes.

15 Q Now, going back to Government's Exhibit 5. Can you
16 indicate the correlation between the box that we saw in 9
17 and the location here in Government Exhibit 5. Now, the
18 smartphone that you identified found and depicted in
19 Government's Exhibit 6, does that correlate to any of the
20 two boxes that were found that you mentioned in Government
21 Exhibit 9?

22 A I do not recall that.

23 Q What type of phone was the one in Government's Exhibit
24 6 that was seized?

25 A It was an Android smartphone.

1 Q Did you provide a specific description within the
2 motion notifying violations?

3 A I do not recall right now. I would have to review my
4 motion.

5 Q Would reviewing the motion that you filed refresh your
6 recollection?

7 A Yes.

8 MS. HERNANDEZ: Your Honor, may we approach?

9 THE MAGISTRATE: Yes, for refreshing recollection
10 purposes, yes.

11 MS. HERNANDEZ: For purposes of the record, it's
12 docket 439. It's part of the court record.

13 THE MAGISTRATE: You may approach the witness.

14 THE WITNESS: It's a black Android VLU. That's the
15 model.

16 BY MS. HERNANDEZ:

17 Q Was it with the corresponding charger?

18 A Yes, it was.

19 Q What other items did you seize that day?

20 A The hot spot and the tablets.

21 Q Now, for purposes of this hearing, do you adopt the
22 statements that you made in that motion at docket 439?

23 A Yes.

24 MR. LERMAN: Objection, Your Honor. We object to
25 -- we don't know where the government is headed with this

1 but what's listed in docket entry 439, the Probation Officer
2 has already filed something with the Court stating that
3 these allegations are based on what other individuals have
4 said.

5 If there is an attempt to use this document, the
6 document is unsworn. If there's any attempt to use this
7 related to as proof of any of the allegations 1 through 6,
8 we would object and there's multiple layers of hearsay that
9 would violate Mr. Negron's right under Rule 32.1 to confront
10 and cross examine adverse witnesses against him.

11 THE MAGISTRATE: I will sustain the objection but
12 AUSA Hernandez, you are free to continue your direct
13 examination to cover additional topics.

14 MS. HERNANDEZ: Yes, we are, Your Honor.

15 THE MAGISTRATE: Related to that motion.

16 MS. HERNANDEZ: And if we may briefly respond? We
17 want to clarify that this is the preliminary hearing of the
18 revocation proceedings, so that it is not subject to the
19 same as, for example, when we proceed with a criminal
20 prosecution in trial.

21 The witness can adopt statements that were made in the
22 past. This motion in particular, the Court can take notice
23 of because it's in docket 439 and part of the record of the
24 same and the defense will have an opportunity to cross
25 examine this witness in this proceeding, both for the

1 statement made here and in relation to the motion that was
2 filed notifying the supervision.

3 THE MAGISTRATE: Well, there's several things
4 there. First, there's an element of discretion.

5 MS. HERNANDEZ: Yes, Your Honor.

6 THE MAGISTRATE: And the Court can decide whether
7 to allow the witness to adopt it or not and I can choose to
8 exercise my discretion the way that I believe that fits best
9 the particular circumstances of the case.

10 MS. HERNANDEZ: Yes, Your Honor.

11 THE MAGISTRATE: The second one is as to can I take
12 judicial notice of what has been filed? Well, of course I
13 can take judicial notice of what are the allegations made
14 but I'm here to make an assessment as to whether there is
15 probable cause and I believe that it's fair to allow in this
16 particular case for the witness to testify as to any
17 particular matters that pertain to those allegations
18 notified.

19 So, can I take notice of what has been alleged? Sure,
20 in exactly the same way that I can take notice of what are
21 the charges in an indictment but that is not the same thing
22 as meaning that I'm going to allow necessarily the witness
23 for purpose of his testimony today to adopt the contents of
24 the motion.

25 So, having said that, having said that, since I have

1 sustained the objection, you're free to continue with your
2 direct examination as to any other matters that you wish to
3 ask this witness.

4 MS. HERNANDEZ: Yes, Your Honor.

5 BY MS. HERNANDEZ:

6 Q Now, once the search was completed, what was the
7 interaction, if any, with the defendant, Alexis Negron?

8 A I explained the procedure in terms of after seizing the
9 smartphone, we talked about that the same was a violation of
10 his supervision condition. He did not agree that the same
11 was a violation.

12 MR. LERMAN: Objection, Your Honor, the same as
13 previously. It's speculation about what happened in the
14 mind state of someone else.

15 THE MAGISTRATE: Well, I will allow for the
16 prosecutor to do follow up questions to lay the foundation.
17 So, for example, Officer, when you say that he did not
18 agree, where are you getting that from?

19 THE WITNESS: He stated that he did not agree with
20 the conditions imposed by the Court.

21 THE MAGISTRATE: So, again, I think that you're --
22 I mean I understand the nature of your objection but AUSA
23 Hernandez, whenever you have situations like this with the
24 witness, please ask the pertinent follow up questions so
25 that we know what is the basis of knowledge of the witness.

1 You may proceed.

2 MS. HERNANDEZ: We will, Your Honor, but to
3 clarify, our question was, "what interaction did you have
4 with the defendant, Alexis Negron", and he was responding as
5 to a particular interaction and that's when the objection
6 came in.

7 BY MS. HERNANDEZ:

8 Q Officer, what you're inquiring is specifically can you
9 describe that interaction with the defendant.

10 A After explaining that the same was in violation of his
11 conditions --

12 MR. LERMAN: Objection, Your Honor. That's an
13 expression of a legal opinion and again, we have a fact
14 witness that's presented by the United States in an
15 adversarial proceeding and we respectfully object and ask
16 the Court to instruct the witness to testify based on what
17 he actually saw or heard, anything that's percipient.

18 THE MAGISTRATE: Overruled. He has said that he
19 explained to the defendant that this was a violation of his
20 conditions. If you want to cross examine that, you may.
21 Overruled. You may proceed.

22 THE WITNESS: I said that the case -- that the
23 violations would be staffed with my supervisor in order to
24 seek guidance of the same.

25 BY MS. HERNANDEZ:

1 Q What happened after that?

2 A After that, we concluded the intervention and left.

3 Q Now, going to November 28, 2023, what transpired, if
4 anything, that day?

5 A Can I refer to my motions so I can refresh --

6 MR. LERMAN: May I ask clarification what the date
7 was that the government requested?

8 MS. HERNANDEZ: November 28, 2023.

9 MR. LERMAN: Okay and we object to a request by a
10 witness to ask for help clarifying his -- what his answer
11 would be. If the answer is, "I don't know" or "I don't
12 remember", then that should be the answer.

13 THE MAGISTRATE: Well, you may ask it again, this
14 particular matter, to the witness.

15 BY MS. HERNANDEZ:

16 Q Did you include the dates of your interactions, at some
17 of your interactions with the defendant on docket 439?

18 A Yes.

19 Q Would reviewing that assist in refreshing your
20 recollection?

21 A Yes.

22 MR. LERMAN: Objection, Your Honor. He hasn't
23 answered the question and so there is no reason to refresh
24 if he hasn't stated that he doesn't know.

25 THE MAGISTRATE: All right. AFPD Lerman, you're

1 technically right but you see, we can get to the shore with
2 a two hour swim or with a fifteen minute sprint. So, let's
3 cut to the chase. Officer, do you remember what if anything
4 happened on the 28th of November of 2023?

5 THE WITNESS: I --

6 THE MAGISTRATE: Yes or no?

7 THE WITNESS: I do not recall right now, Your
8 Honor.

9 THE MAGISTRATE: Do you have any follow up
10 questions that now in light of this answer you want to give
11 to the witness?

12 MS. HERNANDEZ: Yes.

13 BY MS. HERNANDEZ:

14 Q Is there any document that would refresh your
15 recollection as to the particular date?

16 A Yes.

17 Q What would that be?

18 A The motion that I filed.

19 MS. HERNANDEZ: Your Honor, at this time we would
20 request to approach the witness with docket 439.

21 THE MAGISTRATE: You may for refreshment of
22 recollection purposes. Let the record reflect that AUSA
23 Hernandez has retrieved docket 439, the document that has
24 been docketed with docket number 439 from the witness. You
25 may proceed with your emanation.

1 BY MS. HERNANDEZ:

2 Q So, I inquire, what, if anything, happened on November
3 28, 2023?

4 A I scheduled an appointment with the IPPC. That's the
5 electronic monitoring system that our office has a contract
6 with to install or make an appointment for Mr. Negrón Cruz,
7 so we can install the monitoring system in a smartphone for
8 him.

9 Q What is the monitoring system?

10 A The monitoring system is a contract company that the
11 United States Probation Officer has under contract that
12 monitors the cell phones of the person that has the
13 monitoring program inside.

14 It monitors web pages, texts, all that it has to do
15 with a smartphone.

16 Q What was that going to be used for?

17 A To monitor Mr. Negrón Cruz' cell phone as his condition
18 of supervision if he wants to have access to the internet.

19 Q On November 15, 2023 when you found the smartphone
20 that you have indicated that that smartphone, did it have
21 the monitoring device?

22 A No.

23 Q Had the defendant informed of the possession of that
24 smartphone?

25 A No.

1 Q Now, after November 28, 2023, what happened?

2 A After he got the appointment for I believe it was
3 December 7, 2023, the same was not able to be installed on
4 his cell phone as it was --

5 MR. LERMAN: Objection, Your Honor, foundation and
6 even though it doesn't refer to a statement, it appears to
7 be a hearsay statement that hasn't been communicated with
8 any foundation.

9 THE MAGISTRATE: Well, I'll allow the witness to
10 answer. I'm going to hold in abeyance my ruling on your
11 objection. I'll allow the witness to answer. Go ahead, you
12 may finish your answer.

13 THE WITNESS: But they were not -- I mean, the
14 electronic monitoring program system was not able to be
15 installed in Mr. Negrón Cruz' cell phone as the same was not
16 comparable.

17 MR. LERMAN: Objection, Your Honor, and we'd add
18 lack of personal knowledge.

19 THE MAGISTRATE: Just a moment, please. I couldn't
20 hear the last part of your sentence. As the same was what?

21 THE WITNESS: Not comparable with them. Like they
22 were not -- his cell phone was not in the list of the cell
23 phone that the program allows them to have.

24 THE MAGISTRATE: Okay. How do you know this?

25 THE WITNESS: Because the monitoring program told

1 me --

2 MR. LERMAN: Objection, Your Honor, it's hearsay
3 and that alleged declarant is not present in court to be
4 confronted and cross examined.

5 THE MAGISTRATE: It is hearsay but then taking them
6 into account -- I don't disagree with you as to the hearsay
7 nature of it. It is but taking into account that the Rules
8 of Evidence do not apply strictly and that these are
9 statements that were made directly to him, I will allow and
10 then give it whatever weight I believe is due.

11 MR. LERMAN: Just to clarify for the record, then
12 we object under Rule 32.1. There's been no balancing and we
13 also object, the government suggested to the Court earlier
14 that it didn't have to address confrontation issues and
15 there's a Fifth Amendment confrontation right in these
16 proceedings and that would be violated at this time.

17 So, the generic proposition that the Rules of Evidence
18 don't formally apply, doesn't cover the present objection.

19 THE MAGISTRATE: Your objection is duly noted for
20 the record and your objection is overruled. You may finish
21 your answer.

22 THE WITNESS: And also I had a telephone call with
23 the case manager from Guarabi and with Mr. Negron Cruz and
24 they both stated that the same was not able to be installed
25 in his cell phone.

1 MR. LERMAN: Same objection, Your Honor. Same
2 objection as to the former USPO.

3 THE MAGISTRATE: Noted and overruled. Could you
4 please repeat because I couldn't hear the last portion due
5 to the objection.

6 THE WITNESS: That we had a three-way telephone
7 call with Mr. Negrón Cruz and his case manager from Guarabí
8 and they both indicated to myself that the monitoring
9 program was not able to be installed because it was not a
10 compatible device.

11 THE MAGISTRATE: You may proceed.

12 BY MR. HERNÁNDEZ:

13 Q I'm going to call your attention to December 5, 2023.
14 What, if anything, happened that day?

15 A I made contact with Mr. Negrón Cruz at his room in
16 Guarabí Caribe.

17 Q When you indicate made contact, what do you mean?

18 A A face to face contract, a home visit to his residence
19 at that time.

20 Q Where was that?

21 A In Guarabí, Carib, in Caguas, Puerto Rico.

22 Q Can you describe to the Court what transpired during
23 that interaction on December 5, 2023 during the home visit?

24 A So that day I went with United States Probation Officer
25 Rosangela Lugo. On that day we visit Mr. Negrón Cruz at his

1 residence and at that time Mr. Negron Cruz was in his room
2 and we were attempting to make a visit to him as a routine
3 visit but we were attempting to communicate with Mr. Negron
4 Cruz but he was --he didn't want to communicate with the
5 Probation Officer.

6 MR. LERMAN: The same objection as previously, Your
7 Honor. It's subjective speculation.

8 THE MAGISTRATE: I'll hold in abeyance my ruling on
9 follow up questions.

10 BY MS. HERNANDEZ:

11 Q Can you describe your interaction and what, if
12 anything, was said or happened during this event.

13 A He stated -- Mr. Negron Cruz stated that he didn't
14 want to talk to me and that all the communication was going
15 to be through the Court.

16 Q From your point of view, what was the attitude of the
17 defendant at that time?

18 A It was a negative attitude.

19 MR. LERMAN: The same objection, Your Honor.
20 Speculation, subjective opinion testimony that doesn't have
21 foundation.

22 THE MAGISTRATE: As to the previous objection that
23 I held in abeyance, overruled. As to this one, ask your
24 follow up questions. I'm holding in abeyance again my
25 ruling.

1 BY MS. HERNANDEZ:

2 Q Why do you say this?

3 A His demeanor and the way that he was talking to myself
4 was not appropriate as he was stating that he didn't want to
5 be in supervision; that this supervision was a restrictive
6 supervision instead of a supervised release and he was asked
7 about employment. In that case the Probation Officer --

8 MR. LERMAN: Objection, objection, Your Honor, not
9 responsive to the question.

10 THE MAGISTRATE: Well, to address your previous
11 objection as to whether the -- what characterization to give
12 to the attitude, I'll sustain your objection. I will draw
13 my own conclusions based on the statements.

14 However, his answers to the questions as to what the
15 defendant said, those answers remain in the record and as to
16 that, those remain admissible for purposes of the evidence
17 to be taken into account. So, what's your new objection
18 now, AFD Lerman?

19 MR. LERMAN: Yes, Your Honor, the narrative, the
20 on-going narrative is not being responsive to that question
21 about the attitude.

22 MS. HERNANDEZ: I specifically asked him --

23 THE MAGISTRATE: Overruled. You may proceed.

24 THE WITNESS: As to employment, the Probation
25 Officer gave multiple proposed employment plan as to getting

1 employment in which Mr. Negron Cruz denied all the options
2 provided to him in terms of seeking employment and stated
3 that without internet, he was not able to seek an employment
4 and after providing all those options, he just stated that
5 the same are not going to work and just laughed.

6 BY MS. HERNANDEZ:

7 Q You indicated that after you provided options,
8 defendant indicated that it was not going to work and
9 laughed. What were the options that were provided?

10 A So, one of the options were that he was to use
11 supervised internet in Carib Guarabi with his case manager
12 to seek employment. The other was to go out and simply seek
13 employment but he stated that that would not work for him.

14 Q Now at that point in time, did defendant work full time
15 at least 30 hours per week at a lawful type of employment?

16 A No.

17 MR. LERMAN: Objection, Your Honor, leading.

18 THE MAGISTRATE: Although the question is not
19 necessarily suggesting whether he should answer in the
20 affirmative or in the negative, perhaps the matter can be
21 addressed in a more open ended manner, you know, as to
22 whether there were any other matters that transpired or any
23 other alleged violations that transpired and then let's see
24 what the witness answers.

25 So, I'm going to sustain your objection, not because I

1 believe that the question in and of itself is suggesting an
2 affirmative or a negative answer but simply because it could
3 be suggesting to the witness what could other potential
4 violations be. You may proceed with your examination of the
5 witness.

6 BY MS. HERNANDEZ:

7 Q Did the defendant at that point in time, since your
8 supervision and your visit from November 9 until the date
9 that we are now conversing about, December 5, did he have a
10 full time employment?

11 A No.

12 Q Is there any condition or requirement as part of his
13 supervised release conditions relating to employment?

14 A Yes.

15 Q What is that?

16 A That the defendant shall be gainfully employed while
17 in supervision.

18 MS. HERNANDEZ: Your Honor, at this time we would
19 request that the Court take notice of standard condition
20 number 3, that is part of the judgements in relation to the
21 docket.

22 THE MAGISTRATE: Just give me a second, please, so
23 I can access the docket.

24 MR. NISKAR: May I ask what docket we're reading
25 from?

1 THE MAGISTRATE: I don't believe she mentioned a
2 specific docket number. I think she just alluded generically
3 as to the judgements in plural.

4 MS. HERNANDEZ: The last judgement, Your Honor,
5 that we had mentioned to the Court is at document 429 but as
6 we indicated, those are standard conditions and special
7 conditions that are included in the judgements in this case.

8 THE MAGISTRATE: I understand but I want to, you
9 see when you say, when you're asking me to take judicial
10 notice of what standard condition number 3 is, well, I want
11 to look at it. I want to see where it is and I'm looking
12 for it right now.

13 Just give me a second because right now I can't find
14 it. I'm looking in docket 429 and just bear with me for a
15 moment. It might be there. It might be there. It's just
16 that I haven't been able to find it.

17 MR. NISKAR: I can assist the Court.

18 THE MAGISTRATE: I welcome your assistance in that
19 regard.

20 MR. NISKAR: So docket 429 is related to a
21 judgement following a revocation which adopted on pages 4 of
22 6, and 5 of 6, and 6 of 6. The same conditions that were
23 previously imposed on him at the time of his original
24 sentencing.

25 Those standard and special conditions the Court can

1 find at document 143. It was entered on December 4, 2013 at
2 pages 3 through 6.

3 THE MAGISTRATE: Okay.

4 MS. HERNANDEZ: We have the three judgements
5 printed, Your Honor, and the Court could have the same.

6 THE MAGISTRATE: I mean, I just want to make sure
7 that I am and thank you, AFD Niskar, for your assistance on
8 that regard. I just want to make sure that we're all on the
9 same page because you see, we have -- there's a terminology
10 here.

11 Some are called mandatory conditions, others are called
12 standard conditions, others are called special conditions.
13 So, I just want to make sure that the one that you're
14 referring to is the one that I'm reading and that we're not
15 looking at different conditions.

16 That's all that I'm trying to get at, so just to be
17 clear, you're not referring to a mandatory condition.
18 You're not referring to a special condition. You're
19 referring to a standard condition.

20 MS. HERNANDEZ: Correct, Your Honor.

21 THE MAGISTRATE: Number 3.

22 MS. HERNANDEZ: Yes.

23 MR. LERMAN: And again, number 3 from which
24 judgement because number 3 from the original judgement.

25 THE MAGISTRATE: Oh, they're different?

1 MR. NISKAR: Yes, they're all different.

2 THE MAGISTRATE: Okay, well, AUSA Hernandez, that
3 is a problem and it's really on you then to really put the
4 Court in that position to know exactly which one you're
5 referring to.

6 See, it's not the same thing to say, all the conditions
7 are repeated, that all the conditions have the same numbers.

8 MS. HERNANDEZ: We understand, Your Honor.

9 THE MAGISTRATE: So, then if you're going to ask me
10 to take judicial notice of a particular condition, to avoid
11 this confusion, how about if we do it this way. You ask the
12 Court to take judicial notice of the judgement entered in
13 docket so and so, on page so and so, number so and so, and
14 that way there is no ambiguity as to which one you're
15 referring to and I think that that will help all of us,
16 meaning the defense, the witness, the Court, so that we are
17 all clear which one you're referring to.

18 MS. HERNANDEZ: Yes, Your Honor, and if we may, we
19 are understanding that in this preliminary hearing for
20 revocation proceedings, there is a motion that was filed by
21 Probation which is part of the docket and which particularly
22 standard conditions are being included there, particularly
23 special conditions, and that is what's served as notice to
24 the Court as to what are the conditions that are being
25 noted.

1 THE MAGISTRATE: That's fine but ultimately AUSA
2 Hernandez, what matters to me -- you see it's one thing what
3 the Probation Officer says is the condition allegedly
4 violated. It's another thing for you to ask me to take
5 judicial notice that, in fact, that was a condition in
6 effect and for that, in order for me to take that as a
7 judicial notice, you need to allude to the specific
8 judgement.

9 Okay, so that that way I can look at the judgement with
10 my own eyes and I can just go ahead and say, "okay, here it
11 is."

12 MR. NISKAR: So, for example, the government had
13 asked the Court to take judicial notice of special
14 conditions 31 and 32 and there are no such special
15 conditions in these judgements. There are no numbers 31 and
16 32 in any of the judgements.

17 MS. HERNANDEZ: Your Honor, if I may ask the
18 witness relating to this also.

19 THE MAGISTRATE: AUSA Hernandez, you don't need to
20 ask the witness this. All you need is to, if you have a
21 computer right now, go into the docket, look at the
22 judgement, the most recent one, open it and tell me exactly
23 which docket number, which page, which standard condition.
24 It's that simple.

25 MS. HERNANDEZ: Yes, Your Honor, and to clarify

1 because we want the record to be clear. There are three
2 judgements in this case and they all relate to one another
3 because even though there are two revocations, there are
4 certain standard conditions and special conditions that upon
5 imposing the judgement in the revocation proceedings, remain
6 and are adopted as to the subsequent one.

7 The last judgement is document 429, which is the one we
8 mentioned to the Court, was issued on November 9, 2023.

9 THE MAGISTRATE: Okay and all right. So,
10 specifically on docket 429, which condition do you want me
11 to take judicial notice of?

12 MS. HERNANDEZ: Yes, Your Honor. In that
13 particular one, in page 5 of the judgement, there's standard
14 condition of supervision 7.

15 THE MAGISTRATE: Okay, the one that starts with
16 "You must work full time"?

17 MS. HERNANDEZ: Yes, Your Honor.

18 THE MAGISTRATE: Okay, keep going.

19 MS. HERNANDEZ. That is the one that we were
20 particularly inquiring about.

21 THE MAGISTRATE: Okay, well that doesn't sound,
22 doesn't ring to my ear like standard condition number 3,
23 which is what I heard sometime ago. At least in the
24 judgement that I'm looking on my screen, I see a number 7,
25 right underneath standard conditions.

1 You see why it's important for all to be clear?
2 Precision. Docket number, page number, number of the
3 condition and that way we're all on the same page.

4 I do take judicial notice of standard condition number
5 7, which appears on page 5 of the judgement entered in
6 docket 429.

7 MR. NISKAR: Your Honor, we respectfully renew our
8 request to have this hearing continued in light of the
9 testimony that the Court has heard so far and in light of
10 the government's difficulty to move through highly, highly
11 subjective allegations.

12 The reasons that we put -- that we pleaded in our
13 motion for a stay and the reasons that we mentioned last
14 week on February 7, regarding the risk of irreparable harm
15 to Mr. Negrón, are playing out before Your Honor and we
16 think not only would the government not be prejudiced by a
17 continuance while the briefing on the structure of these
18 proceedings proceeds.

19 We think it actually may promote the appearance of
20 fairness of this process because what's playing out before
21 Your Honor is the government essentially deferring to what
22 the Probation Officer pleaded and alleged and stated as a
23 fact witness and the Court assisting the government to
24 present its case, and so, the overall appearance of
25 adjudication by a neutral and detached arbiter was at issue

1 before we entered this hearing and it remains at issue. So
2 we do renew our request.

3 THE MAGISTRATE: Denied and I do take issue with
4 your statement of that the Court is assisting the government
5 presents its case. Had I wanted to do that, I would have
6 allowed this witness to adopt its entire motion as part of
7 his testimony and I did not allow that, among other things
8 of objections that you have raised.

9 But aside from that, aside from that, your request to
10 continue this hearing is denied for the reasons that I have
11 already articulated. You may proceed with the examination
12 of the witness.

13 BY MS. HERNANDEZ:

14 Q Now during this interaction on December 5, 2023, did
15 you provide instructions to the supervisee, to the
16 defendant, Alexis Negrón?

17 A It was talked about employment and the way that he
18 needs to --

19 MS. LERMAN: Objection, not responsive to the
20 question. It was talked about, it's unclear.

21 THE MAGISTRATE: Can you repeat your question.

22 BY MS. HERNANDEZ:

23 Q During this interaction on December 5th, 2023, did you
24 provide instructions to the supervisee, to the defendant,
25 Alexis Negrón?

1 A Yes.

2 Q What type of instructions did you provide?

3 A To seek employment.

4 Q What was the response, if any?

5 A That all the options provided by the Probation Officer
6 doesn't work for him and he laughed.

7 Q Now, when was your next interaction with Alexis Negron?

8 A On January, I believe, 2024.

9 MR. LERMAN: I'm sorry. I didn't hear the answer.

10 THE MAGISTRATE: Could you repeat please your
11 answer.

12 THE WITNESS: January, 2024.

13 BY MS. HERNANDEZ:

14 Q I'm going to call your attention specifically to
15 January 3rd, 2024. What, if anything, happened on that day?

16 A On that day I again conducted a face to face contact
17 with Mr. Negron at his residence, at his address of
18 residence in Guarabi Carib, along with United States
19 Probation Officer Rosangela Lugo, in order to conduct a
20 supervision followup.

21 Q What happened?

22 A Upon arrival to Mr. Negron Cruz' room, when he opened
23 the door, he stated to me, "what do you want?" After that I
24 tried to converse with Mr. Negron about his attitude and
25 about the way that he needs to comply with the conditions of

1 supervision and the way to communicate with the Probation
2 Officer.

3 Q What was the response, if any?

4 A He stated again that all the communications was going
5 to be through motions to the Court.

6 Q What was the demeanor at that time of Alexis Negrón?

7 A His demeanor was -- he had a poor attitude and he
8 was --

9 MR. LERMAN: The same objection as previously, Your
10 Honor, about speculation and personal knowledge.

11 THE MAGISTRATE: Well, witness, again, the same
12 objection. You have to ask the same follow up question and
13 I'm holding in abeyance the ruling. Establish the basis.

14 BY MS. HERNANDEZ:

15 Q You were describing at this point in time the
16 interaction. Can you indicate what statements, if any, the
17 defendant made to you directly?

18 A He stated that he didn't want to talk to me and that
19 all the communications was going to be through the courts by
20 motions.

21 Q You were describing the demeanor at that time.

22 A Yes, his demeanor. The first contact was made, "what
23 do you want?" It's not a common thing a supervisee states
24 to his Probation Officer.

25 MR. LERMAN: Objection, foundation, opinion and

1 probably hostile attitude from the officer in answering.

2 MS. HERNANDEZ: No, first of all, fairly noted for
3 the record, there's no hostile response. He's responding
4 directly to the question. As part of the conditions of
5 supervision, it also includes the communications,
6 particularly with the Probation Officer and the attitude and
7 that is why we are entering into these questions,
8 specifically relating to the interactions relating to
9 following instructions relating to the inquiries that are
10 being made and all this is part of the revocation
11 proceedings and what has been informed to the Court.

12 THE MAGISTRATE: The objection is overruled. You
13 may proceed.

14 THE WITNESS: Yeah, so a poor attitude. After
15 that, I observed that there was another person under
16 supervision inside the room with Mr. Negrón Cruz laying down
17 on top of his bed, like a secondary bed, a bunk bed.

18 BY MS. HERNANDEZ:

19 Q This other person was where? Can you further describe?

20 A So, it's two bunk beds. So he was on the upper one.

21 Q Okay and where was the defendant?

22 A The defendant was standing. He just opened the door.

23 Q What happened at that time?

24 A When I step inside the room, I observed that the other
25 person under supervision had three cell phones in plain view

1 in his bed and I asked him if the three cell phones belonged
2 to him in which he initially stated that, yes.

3 Q Okay, and what happened after that?

4 A After that I tried to communicate with Mr. Negron Cruz
5 in which he was not receptive to the communication that I
6 was making with him and again stated that all the
7 communication was going to be through the Court and he was
8 not going to talk to me.

9 Q That happened during your home visit?

10 A Correct.

11 Q You indicated upon description that you saw three cell
12 phones which were in a bed with another individual. Is that
13 correct?

14 A Yes.

15 Q What happened in relation to that?

16 A So, when I was conducting a home inspection, I asked
17 the defendant to step away, step outside of his room. So, I
18 could explain to the other person under supervision that Mr.
19 Negron Cruz cannot have access to cell phone devices with
20 internet capability and Mr. Negron initially refused to step
21 outside and was very agitated raising his arms and commenced
22 to close distance with the Probation Officer in which at
23 that time I gave him verbal commands just to stay back and
24 to not close the distance between him and me.

25 After he stepped away with the other officer, I talked

1 to this other person under supervision about those cell
2 phones and he indicated that --

3 MR. LERMAN: Objection, Your Honor, hearsay as to
4 whatever the subject person under supervision indicated.
5 Under U.S. versus Rondo, the Court would also have to
6 balance the statements and the reliability of these
7 statements as they're obviously as we know, some of them was
8 under supervision, had conditions imposed upon him, was
9 being supervised by the Probation Department, had every
10 incentive to lie to the Probation Department when they were
11 questioning him at Guarabi.

12 These statements are inherently unreliable and ask that
13 they be excluded under hearsay.

14 THE MAGISTRATE: You want to respond to that?

15 MS. HERNANDEZ: Yes, Your Honor, first of all, as
16 we indicated, this is a preliminary hearing relating to
17 revocation proceedings, so the evidentiary rules do not
18 apply in the same manner.

19 At this point and stage, we are inquiring about
20 statements made directly to the officer while he is doing
21 the home inspection, particularly related to devices being
22 found in defendant's phone and it is how also the inspection
23 takes place and part of the proceedings relating as to the
24 surroundings, the persons that are beside the defendant and
25 are relevant to the revocation proceedings, Your Honor.

1 THE MAGISTRATE: Well, taking into account once
2 again that this is a preliminary revocation hearing and that
3 the statements were made directly to this witness, I will
4 overrule the objection and then I'll give the testimony the
5 weight that I believe it deserves. You may proceed.

6 THE WITNESS: So, when Mr. Negrón Cruz step outside
7 the room, I talked to the other person under supervision
8 about the ownership of the three cell phones in which he
9 stated that one of the cell phones provides internet
10 services to the other two cell phones.

11 He voluntarily showed the cell phones in which he --
12 the two cell phones that does not have internet access in
13 which I observed that one of those two had internet access
14 because he had a carrier, a T-Mobile carrier in which I
15 asked him about this specific telephone and then he took
16 ownership of two cell phones and the other one he stated
17 that belongs to Mr. Negrón Cruz.

18 After that he provide me that telephone that belonged
19 to Mr. Negrón Cruz and I confirmed that Mr. Negrón Cruz
20 about the ownership of the cell phone and that the other
21 person under supervision stated that this belonged to Mr.
22 Negrón Cruz in which Mr. Negrón responded that that
23 telephone belonged to former U.S. President Barack Obama, in
24 which I asked him again about the ownership and he nodded
25 his head affirming that the telephone was his and provided

1 the access code of the same and which was correct.

2 MR. NISKAR: We object there. This appears to be
3 a translation and an uncertified translation that's being
4 proffered to the Court.

5 THE MAGISTRATE: Fair grounds for cross
6 examination. Overruled. You may proceed.

7 BY MS. HERNANDEZ:

8 Q Now, you indicated that defendant said what relating to
9 that phone? We want the record to be clear.

10 A That the telephone belonged to former U.S. President
11 Barack Obama and after again asking him again about the
12 ownership of the telephone, he nodded his head affirming
13 that the telephone belonged to him and I asked him about the
14 access code of the same, in which he provided the same and
15 it was correct.

16 Q You're indicating that it was correct. Why do you say
17 this?

18 A Because it granted me access to the cell phone, the
19 access code that he provided.

20 Q So, what did you do in relation to the access code that
21 was provided by Alexis Negrón to you?

22 A I verified the cell phone and the same was with
23 internet access.

24 Q Can you describe what type of cell phone that was.

25 A It was a smartphone, an Android smartphone.

1 Q Did that particular phone have internet access?

2 A Yes.

3 Q How were you aware of this?

4 A I verified and it had a carrier, a cell phone carrier
5 and it had internet access when I verified it.

6 Q Did that particular phone have any matched monitoring
7 equipment as required?

8 A No.

9 Q Now, subsequent to that interaction, did you report the
10 violations in any manner?

11 A Yes, it was reported, the violations.

12 Q What did you proceed to do?

13 A After seizing the telephone?

14 Q Yes.

15 A So, I said to Mr. Negron Cruz that the same was going
16 to be seized and he immediately responded, "are you going to
17 leave me without a cell phone again" and he repeated that
18 three times and then he became very agitated, started
19 raising his voice and he started approaching me, in which at
20 that time I gave him verbal commands to stay back, just to
21 stay back and he complied.

22 Q When you indicate he started approaching you, what do
23 you mean by that?

24 A He started closing distance between him and me, and
25 myself.

1 Q What did you interpret that to be?

2 A A very hostile manner. Raising his voice, swinging his
3 arms and stating that "are you going to leave me again
4 without cell phone?"

5 MR. NISKAR: I'm sorry, "leaving"? What did you
6 say?

7 THE WITNESS: "Leaving me without a cell phone."

8 BY MS. HERNANDEZ:

9 Q Had instructions been provided to the defendant
10 relating to his possession of any smartphone or device with
11 internet?

12 A Yes. Conditions were read to him and explained to him
13 and especially that if he had any devices, he needs to first
14 be approved by the Probation Officer before getting that
15 device.

16 Q According to what you observed and found and seized,
17 were these instructions followed?

18 A I'm sorry?

19 Q According to what you have indicated here that you
20 observed during your home visits and what you found and
21 seized, were these particular instructions followed by the
22 defendant?

23 A No.

24 MR. LERMAN: Objection. That called for
25 speculation and it's really unclear what the answer to that

1 means.

2 THE MAGISTRATE: You may cross examine him on that.

3 BY MS. HERNANDEZ:

4 Q Now, do you have information relating to the
5 association of this defendant with other individuals that he
6 is not supposed to associate himself with?

7 A So, as indicated by Guarabi personnel, he was an
8 information provider to me --

9 MR. LERMAN: Objection again under the Rule 32.1
10 confrontation right, we have another attempt to transmit a
11 statement by someone out of court that's alleged in an
12 adverse manner and Mr. Negron has a right, again, a right to
13 confront and cross examine that person and the government
14 has a burden to present evidence in the balancing test that
15 the reliability of those statements would be overcome by
16 the burden of producing someone.

17 So, we don't have any evidence that anybody was asked
18 to come to this hearing from Guarabi and it doesn't matter
19 that this is a preliminary revocation. It's well settled,
20 so it can't be an answer and it would encourage the Court to
21 commit reversible error to say that this is just a prelim
22 and this is just in the course of his duties, the rights
23 still apply.

24 MS. HERNANDEZ: We may respond, Your Honor?

25 THE MAGISTRATE: You may.

1 MS. HERNANDEZ: Yes, we do indicate that this is a
2 preliminary hearing and the Court has the discretion to
3 determine and evaluate the reliability and credibility of
4 the information being provided. Nonetheless, it is also
5 settled that affidavit, other documents can be taken into
6 consideration.

7 In this case we have the Probation Officer who is
8 indicating information provided directly to the Probation
9 Officer as part of his duties and obligations to supervise
10 the defendant in this case who at that point in time is
11 residing within the Guarabi Residential Program.

12 In addition to that, as defense counsel is well aware,
13 as part of the discovery process even before the preliminary
14 hearing, he was provided as was I, the report of Guarabi
15 relating to all this information as well as the monthly
16 treatment reports relating to -- so this is information that
17 the defense has received and it's not something new or any
18 new factual allegation that is being included at this stage
19 of the proceedings.

20 That being said, being that these are statements and
21 input being received directly by the Probation Officer as
22 part of his duties and obligations, we would request that
23 the testimony be allowed.

24 THE MAGISTRATE: Well, although I'm going to
25 overrule the objection, ask the witness specifically who and

1 when was communicated.

2 MS. HERNANDEZ: Yes, Your Honor.

3 THE MAGISTRATE: All right, so rephrase your
4 question and then you may proceed.

5 BY MS. HERNANDEZ:

6 Q Now, Officer, you stated that during these points in
7 time that we have been talking about, the defendant was
8 residing in Guarabi. Have you received or did you
9 personally receive input from Guarabi relating to the
10 defendant's behavior at the center?

11 A Yes.

12 Q Who provided you this information?

13 A The Guarabi case manager, Migdalia, I forgot her last
14 name but her first name is Migdalia.

15 Q As part of putting someone that's on supervised
16 release within the Guarabi center, is it part of the process
17 to receive information from the case managers?

18 A Yes.

19 Q Why so?

20 MR. LERMAN: Objection, Your Honor. It's
21 irrelevant to any of these charges and it's irrelevant to
22 whether the confrontation right could be put aside at this
23 point for the justification that the government alleged.

24 THE MAGISTRATE: Overruled. You may proceed.

25 BY MS. HERNANDEZ:

1 Q Why is it that you receive information from the center
2 where the defendant is residing and has a case manager?

3 A Because we placed him inside Guarabi because it has a
4 contract with us, so any information related to violations
5 or needs, they need to be approved by us and if we need to
6 assist the defendant in any manner inside the Guarabi
7 center, we may.

8 Q What information did you receive relating to the
9 defendant, Alexis Negron's behavior at the center in
10 Guarabi?

11 MR. NISKAR: Same objection. Calls for hearsay and
12 in violation of the Rule 32.1, Fifth Amendment
13 Confrontational right.

14 THE MAGISTRATE: The same answer. They and who?

15 MS. HERNANDEZ: I understood he had provided that
16 information but --

17 THE MAGISTRATE: Yes, well, but I don't know if
18 this -- well, as to the they, no. As to the who, well, it's
19 not entirely clear to me if it's the same person or not.

20 MS. HERNANDEZ: Yes.

21 BY MS. HERNANDEZ:

22 Q Who did you receive the update relating to the behavior
23 of defendant at Guarabi?

24 A The defendant's case manager, Migdalia.

25 Q Relating to that information that Migdalia provided,

1 when did you receive updates relating to this behavior?

2 A Exact dates?

3 Q In what time period?

4 A In all his supervised release term that he was
5 supervised. I believe it was a month and twenty nine days.

6 That's the whole period that they were constantly informing
7 about his behavior, about the defendant's behavior.

8 Q How did the case manager inform about the behavior?

9 A Verbal and in written.

10 Q When you say written, in what format?

11 A So, incident reports and MTRs, monthly treatment
12 reports. Usually at the end of each month they provide that
13 document with the progress of the defendant, the goals and
14 if there has been any violations of the house rules or
15 procedures.

16 Q What was the input that you were receiving in November
17 after you commenced the supervision from November 9 until
18 the time that you filed the motion which was in January 8,
19 2024?

20 A The input was not a positive one as they were stating
21 that Mr. Negron Cruz did not follow the rules of the center
22 by leaving without authorization the center and not going to
23 the group meetings, not doing the chores around the center.

24 Q Was any information provided about the association
25 with other individuals?

1 A Yes, Ms. Migdalia also reported that Mr. Negron Cruz --

2 MR. LERMAN: The same objection, Your Honor, and
3 especially based on what the answers have been so far,
4 there's no basis based on how this has been communicated to
5 the Court so far in extremely vague manner that even not
6 this Migdalia person that's referenced, even that that
7 person had personal knowledge. So, we don't know how many
8 layers of hearsay and all those layers violate the
9 confrontation right.

10 THE MAGISTRATE: Well, in the end when I make my
11 decision as to whether there is or there isn't probable
12 cause, I will have to take into account all these matters.
13 I will have to take into account how reliable or unreliable
14 is what it has been testified about and I will also have to
15 take into account how vague or not vague it is.

16 All those matters are fair to be assessed at the moment
17 that I make my decision as to whether there is or there
18 isn't probable cause.

19 So, although overruled, I am not -- that should not be
20 interpreted as meaning that issues such as vagueness are
21 matters that cannot be taken into account for purposes of
22 whether the government has met its threshold of probable
23 cause. You may proceed.

24 BY MS. HERNANDEZ:

25 Q Yes, you were about to discuss particularly the

1 information you received from Migdalia relating to the
2 association with other individuals.

3 A Yes, Ms. Migdalia informed to me that on multiple
4 occasions the defendant has been associating with another
5 person that is under supervision, on multiple occasions
6 inside the center and also leaving the center together.

7 She informed that this person under supervision that
8 Mr. Negron Cruz was associating was a convict felon for
9 transportation of child pornography, I believe.

10 Q Is the defendant a convicted sex offender?

11 A Yes.

12 Q As part of his conviction, does he also have
13 registration requirements?

14 A Yes.

15 Q Now, what are the rules of the center in relation to
16 coming in and out of that particular Guarabi center?

17 MR. LERMAN: Objection, Your Honor, foundation.
18 That would be a question that the center would have to
19 answer and that foundation hasn't been laid and relevant.

20 It's not relevant at this time to any of the conditions
21 that are alleged to have been violated and noticed at this
22 point as well for the lack of notice regarding what
23 allegations are in pursuit right now.

24 THE MAGISTRATE: Sustained.

25 BY MS. HERNANDEZ:

1 Q As part of your supervision directly, are there
2 guidelines that are indicated when you're placing a
3 defendant in Guarabi?

4 A Yes.

5 Q What are those, particularly to Alexis Negrón?

6 MR. LERMAN: Same objection, Your Honor. Calls for
7 a solicitation of the same content that Your Honor just
8 sustained an objection to be explored at this time.

9 MS. HERNANDEZ: We may respond, Your Honor?

10 THE MAGISTRATE: Overruled. You may proceed and
11 answer the question.

12 THE WITNESS: So, the rules of the center is that
13 if he's going to go outside the center, he needs to notify
14 the purpose of going outside and when he's going to go, he
15 also has, if he's going to use the Guarabi transportation,
16 he needs to notify in advance.

17 Additionally, there are chores in the center that needs
18 to be completed and also group therapies, daily group
19 therapies that he needs to go.

20 MR. LERMAN: Your Honor, the same objection. We
21 move to strike that testimony that appears to have been
22 twisted and given after the Court sustained an objection.

23 THE MAGISTRATE: How do you know this?

24 THE WITNESS: Because Migdalia told me about the
25 rules.

1 THE MAGISTRATE: When?

2 THE WITNESS: Between -- while the defendant was in
3 supervision. I don't recall the exact date and it's also in
4 the incident report provided by Guarabi.

5 THE MAGISTRATE: Well, AFPD Lerman, I think that
6 although -- I think that you had reasonable grounds to
7 reiterate your objection because I first, when I heard the
8 revised question, I thought that the witness was going to
9 answer about his personal knowledge whenever Probation sets,
10 in terms of any guidelines that they use, Probation Office
11 may have when they place somebody in a house like Guarabi.

12 MS. HERNANDEZ: Yes.

13 THE MAGISTRATE: It turns out that that's not what
14 the witness answered. What the witness answer was what the
15 Court had originally sustained. So, I understand the nature
16 of your objection. At this moment --

17 MS. HERNANDEZ: If I may be allowed to ask an
18 additional question relating to that matter to see if the
19 matter is clarified?

20 THE MAGISTRATE: Well, I mean he already said that
21 this was information conveyed to him by Migdalia, the case
22 manager. I believe he already answered that but he doesn't
23 recall when. He simply said, "under supervision."

24 So, all I can say is at this moment these are, I mean,
25 frankly, the most I can say at this moment is that the lack

1 of specificity frankly raises significant questions as to
2 the reliability of this evidence. So, I would let it stay
3 but frankly, I'll take it for what it's worth.

4 MS. HERNANDEZ: Yes, Your Honor, understood.

5 BY MS. HERNANDEZ:

6 Q Now, sir, are you familiar with Guarabi Center and
7 how it operates?

8 A Yes.

9 Q Why are you familiar with the Guarabi Center?

10 A Because I have multiple cases there. I know the rules
11 that applies to the residents that live inside Guarabi.

12 Q In this particular case, was defendant, Alexis Negron,
13 placed in Guarabi?

14 A Yes.

15 Q Are you familiar with the instructions that are
16 provided in Guarabi as to the defendant's being placed
17 there?

18 A Yes.

19 MR. LERMAN: Objection, Your Honor, this has
20 already been asked and answered.

21 MS. HERNANDEZ: Your Honor, but we want to clarify
22 just for the record and for the Court how the Probation
23 Officer has this information and not that it's routine.

24 THE MAGISTRATE: The objection is sustained.

25 BY MS. HERNANDEZ:

1 Q Now, sir, as having someone or being the supervisor
2 officer, do you receive reports relating to the defendant?

3 A Yes.

4 Q In this case did you receive such reports?

5 MR. LERMAN: Objection, Your Honor, that's asked
6 and answered already.

7 THE MAGISTRATE: I believe your objection is fair
8 but for the sake of context for the next line of questions
9 I'll allow it.

10 THE WITNESS: I'm sorry, can you repeat the
11 question?

12 BY MS. HERNANDEZ:

13 Q In this particular case of Alexis Negrón, did you
14 receive these reports?

15 A Yes.

16 Q Are they, if I say real time during the stay of the
17 defendant at the Guarabí Center?

18 A I'm sorry, can you rephrase that question.

19 Q The reports of the behavior that you are recently
20 relating and we're now talking specifically about defendant,
21 Alexis Negrón, do you receive the reports during the stay of
22 the defendant in that particular center?

23 A Yes.

24 MR. LERMAN: Objection, Your Honor, asked and
25 answered and he doesn't know when he got any communication

1 from them.

2 THE MAGISTRATE: I believe the matter has already
3 been addressed. Next question. Sustained.

4 BY MS. HERNANDEZ:

5 Q In this particular case, after your interactions, what
6 happened on January 8, 2024? What did you proceed to do?

7 A I believe I filed a motion notifying violations of
8 supervision to the Court.

9 Q Now, in terms of the Guarabi Center, what is the
10 current situation relating to Alexis Negrón and the Guarabi
11 Center and his ability to reside in that particular center?

12 MR. LERMAN: Objection, Your Honor, calls for an
13 answer that's not based on first hand knowledge and it calls
14 for an answer that's based on confrontation right violating
15 hearsay.

16 THE MAGISTRATE: Overruled. I'll allow the witness
17 to answer.

18 THE WITNESS: It was for information provided from
19 the Guarabi Center that he was not able to attend there
20 anymore based on his recurrency of violations in the center.

21 BY MS. HERNANDEZ:

22 Q When you indicate that he was not able to attend there
23 anymore, what do you mean?

24 A That he will not be allowed to reside there anymore
25 or furthermore.

1 MS. HERNANDEZ: No further questions at this time.

2 THE MAGISTRATE: All right. Who's going to conduct
3 the cross examination of this witness?

4 MR. NISKAR: May we take five minutes?

5 THE MAGISTRATE: You can -- yes, the answer is,
6 yes.

7 THE WITNESS: Can I be excused to go to the
8 bathroom?

9 THE MAGISTRATE: Well, witness, you may have the
10 five minute break as well. I'll remain here in the
11 courtroom. However, during your recess, do not talk with
12 anybody about matters related to this case or your testimony
13 because you're not excused yet from your testimony because
14 now defense counsel will be asking questions on cross
15 examination.

16 So, you can enjoy the five minute break just like
17 anybody else but you don't have to be in the witness box but
18 do not talk with anybody about matters related to this case
19 or your testimony during this recess.

20 THE WITNESS: Okay.

21 THE MAGISTRATE: I'll remain here in the courtroom
22 but you may have your five minute break.

23 MR. LERMAN: Your Honor, may we ask permission for
24 Mr. Negron to use the restroom also?

25 THE MAGISTRATE: Oh, of course, of course. If he

1 needs to use the restroom, absolutely. Of course.

2 (A recess was taken at this time)

3 (Court back in session)

4 THE MAGISTRATE: Officer, if you could please
5 return to the witness box. All right. Very well, AFPD
6 Niskar, your witness for cross examination.

7 MR. NISKAR: Your Honor, prior to beginning our
8 cross examination, we would like to move for a short
9 continuance until this afternoon to come back and begin our
10 cross examination of USPO Lozada.

11 The cronos that we have received are nearly impossible
12 to read and contain information that we believe now that the
13 USPO has testified on direct, provides us with additional
14 fodder for cross examination that we were not aware of prior
15 to this morning.

16 These, as you can see, are single spaced and in font
17 size of approximately 1 or 2, maybe 3, and contain, as you
18 can see, a lot of information that relate to my cross
19 examination and the matters on cross examination.

20 THE MAGISTRATE: Are you saying that you can't read
21 them because of the font size?

22 MR. NISKAR: I'm saying I cannot read it because of
23 the font size and that I have not had the opportunity to be
24 able to digest all of this information in order to provide
25 my client with the zealous affect of the assistance of

1 counsel that he's afforded under the Sixth Amendment. I
2 need time to review these crono notes.

3 THE MAGISTRATE: Well, see, denied because see, you
4 asked for a 15 minute break when those cronos were given to
5 you. I granted that request and when you finished, you did
6 not tell me when you finished, looking in those 15 minutes,
7 "I can't read them because I have -- their font size or I'm
8 not going to be ready."

9 So, having said that though, in the spirit of trying to
10 facilitate matters, we'll begin with the cross examination
11 right now and Ms. Cruz, do we have a copy machine here that
12 can actually increase the size, enlarge the size when we
13 make a copy? Is there a possibility to do that from the
14 copy machine here?

15 THE CLERK: I will have to verify, Your Honor.

16 THE MAGISTRATE: Okay. Well, let's not delay the
17 cross at this moment but in the meantime, can we make a
18 quick test? Just grab any piece of paper. Make a quick
19 test right now to see if there's a possibility to somehow
20 make it a little bit bigger.

21 THE CLERK: I believe we can, Your Honor.

22 THE MAGISTRATE: That you can, okay, good. Mr.
23 Niskar, if you don't mind having those brought here so that
24 at least we can try to enlarge those.

25 MR. NISKAR You don't have any other copies with

1 you, right?

2 THE WITNESS: Well, the same size.

3 THE CLERK: Can you verify if you can read those.

4 THE MAGISTRATE: Well, I mean, certainly, AUSA
5 Hernandez, please, for future occasions, ask the Probation
6 Officer to have something with bigger font size. Frankly,
7 this is very inconvenient but having said that though, it is
8 readable, the original but frankly, it's not reasonable for
9 the defense to ask that they be provided in a bigger font
10 size.

11 Frankly I don't even know what the number for this font
12 size would be but frankly, this leaves much to be desired in
13 terms of font size. Okay. So, having said that though,
14 it's readable. Okay, it's not that it's illegible. It's not
15 illegible, it's readable but frankly, you know, there is no
16 need to give the defense something with this kind of font
17 size.

18 So, we're trying right now to increase the font size as
19 much as possible. Now I understand that these are not
20 documents necessarily generated by you, AUSA
21 Hernandez, but rather from the record keepings of the
22 Probation Office, but perhaps a little note for future cases
23 to give the Probation Officers a heads up that frankly it
24 should be a normal size font. Okay, not something that
25 minuscule.

1 All right, but for the time being, we're trying to
2 provide at least Ms. Cruz has generously attempted to make
3 copies with bigger, a little bit of a bigger font size.
4 No, don't tear the originals. Don't tear the originals,
5 please.

6 THE CLERK: These are not the originals.

7 MR. NISKAR: We have the originals.

8 THE MAGISTRATE: Okay, okay. So, what I want is
9 for Mr. Niskar to have both, the originals and also the
10 copies with a little bit of a bigger font size.

11 THE CLERK: He does, Your Honor.

12 THE MAGISTRATE: All right, okay.

13 MS. HERNANDEZ: Noted and may we briefly respond
14 just so the record is clear, that we received the same exact
15 document that they received. We were aware that cronos
16 existed but purposely did not have a copy for ourselves over
17 the defense because they have even made an issue of that.

18 So, we received it at the same time. We had informed
19 that they should file a motion with the Court and they were
20 fully aware that the position relating to the request for
21 cronos but they opted not to do that.

22 Nevertheless, we, before sitting down the witness,
23 indicated it to the Court because we also did not want any
24 other allegation than what it is that they should have
25 requested, they didn't but we requested the Probation

1 Officer that if they existed, they'd be here and we brought
2 it up to the Court to make sure and did not oppose that they
3 received the same.

4 THE MAGISTRATE: Okay, well, duly noted but in the
5 spirit of my directive is more for future cases. Okay,
6 that's the spirit of my directive, just keep it in mind, you
7 know, that when these documents are produced, to try to have
8 them in a font size that is a little bit more normal or
9 ordinary.

10 MR. LERMAN: Judge Lopez, if we could make a follow
11 up request because we hadn't -- this is the first time the
12 government mentioned that it hadn't gone through the
13 statements to make sure that we received Jencks regarding
14 the witness and so, if the witness has brought other -- has
15 brought all of the crono entries from this period that could
16 be relevant, we'd ask that we be allowed to make an inquiry.

17 THE MAGISTRATE: At this moment I don't want to
18 delay any further the cross examination. So, Mr. Niskar,
19 you may proceed. Your witness for cross examination.

20 MR. NISKAR: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. NISKAR:

23 Q Good afternoon, Mr. Lozada.

24 A Good afternoon.

25 Q You indicated on direct that you've been working for

1 the Probation Department here in Puerto Rico for ten years.

2 A Correct.

3 Q Correct and in those ten years, for how many of those
4 ten years have you been supervising defendants who have
5 been -- who are under supervision post conviction?

6 A Eight to nine years.

7 Q In regards to defendants who are under supervision for
8 offenses involving receipt of child pornography, sexually
9 related convictions, how many years?

10 A Approximately one and a half to two years.

11 Q Have you received any training in supervising these
12 types of offenders?

13 A Yes.

14 Q What types of training?

15 A How to supervise sex offenders. FLETC. South
16 Carolina, Charleston.

17 THE MAGISTRATE: Pardon the interruption. Could
18 you have the microphone a little bit closer towards you.
19 I'm sorry about the interruption, Mr. Niskar. I just want
20 to make sure that his answers can be heard clearly. You may
21 proceed with your examination.

22 BY MR. NISKAR:

23 Q For the record, you said FLETC. That's F-L-E-T-C, the
24 acronym, correct?

25 A Yes.

1 Q Okay and how long was that training in South Carolina?

2 A About a week.

3 Q Okay. Any other training related to these types of
4 offenses?

5 A Yes, in-house training here in our office, too.

6 Q What type of training in-house?

7 A Again, how to supervise sex offenders cases.

8 Q In regards to what?

9 A In regards to monitoring devices, the type of treatment
10 with sex offender treatment, mostly that.

11 Q Okay, monitoring devices, treatment.

12 A Yes.

13 Q What else makes these types of cases different than
14 others?

15 A Yeah, basically the type of treatment that they're
16 going to receive, including polygraph, how a referral to the
17 polygraph specialist for the same to be conducted. Yeah,
18 basically that.

19 Q Okay. In addition to your training in supervising
20 these types of offenders, you're aware that Guarabi is a
21 facility in Caguas that has a contract with the United
22 States Probation Department, correct?

23 A Correct.

24 Q The facility that Mr. Negrón Cruz was housed at was
25 which Guarabi facility?

1 A Carib.

2 Q Carib?

3 A Carib, yeah.

4 Q Where is that?

5 A In Caguas.

6 Q What type of facility is that?

7 A It's a transitional housing center.

8 Q Okay. In addition to the supervisees from this
9 Probation Department, are there other people that live in
10 that facility?

11 A Besides supervisees, yes.

12 Q Okay. You're aware that in that facility are other
13 individuals being supervised by your office for sexually
14 related offenses, correct?

15 A Yes.

16 Q You were aware that, for example, Mr. Angel Martinez
17 was also housed at Guarabi at the same time as Mr. Negron
18 Cruz.

19 A Yes, I was aware.

20 Q So, you were aware that they were in the same facility
21 together.

22 A When I was notified, yes.

23 Q When you were notified.

24 A Yeah, by the association.

25 Q What association?

1 A Migdalia, the coordinator from Guarabi. The case
2 manager indicated the association. I didn't know that that
3 person was a convict for sex offenders.

4 Q That person is being supervised by your office here,
5 correct?

6 A Yes.

7 Q Who was placed in Guarabi first, Mr. Negrón Cruz or
8 Mr. Martínez?

9 A I don't know. I don't have that information.

10 Q Okay, but regardless, they were each placed in the same
11 facility, correct?

12 A Yes.

13 Q Are you aware that they had any other prior
14 relationship before being in the same facility in Guarabi?

15 A No.

16 Q Are you aware that they're related in any way?

17 A Based on information provided by Guarabi?

18 Q Are you in any way aware that they're related by blood?

19 A No.

20 Q Are you in any way aware that they are related in
21 regards to the cases?

22 MS. HERNANDEZ: Objection, Your Honor. A good
23 faith basis has not been established for these questions.

24 THE MAGISTRATE: Overruled. Overruled. I'll allow
25 that. You may proceed with your questions.

1 BY MR. NISKAR:

2 Q Are you aware that their cases were in any way related?

3 A No.

4 Q Were you aware that they were acquaintances before
5 living together at Guarabi?

6 A No.

7 Q Do you have any information that they're friends?

8 A No, besides what Guarabi informed.

9 Q Okay. When you arrived at Guarabi in November of 2023,
10 that was your first instance of making a home visit for Mr.
11 Negrón Cruz.

12 A Correct.

13 Q Okay. Before that he was living where?

14 A He was incarcerated.

15 Q Okay, because of a previous violation and then he was
16 released directly to Guarabi, correct?

17 A Correct.

18 Q So you visited him on what date?

19 A On November 15, 2023.

20 Q Okay and you met him where? Withdraw the question.
21 Did he know you were coming that day?

22 A No.

23 Q Had you met him previously to have him sign any
24 paperwork?

25 A Me, personally, no.

1 Q Had your office had him sign any acknowledgements as to
2 what his conditions of supervision were?

3 A I don't recall that. I know he reported to our office.
4 I think it was the same day he was sentenced or the day
5 after.

6 Q Okay. I'm going to show you -- do you know -- you're
7 aware, are you not that on the supervision forms there is a
8 place for a defendant to sign acknowledging that he's aware
9 of what those conditions are, correct?

10 A Are you referring to the judgement?

11 Q Yes.

12 A Yes.

13 Q Okay. Do you have a copy in your files with Mr. Negrón
14 Cruz' signature showing his awareness and adoption of those
15 rules.

16 A I believe so, yeah, he signed them.

17 Q Can you show those to us here? Can you show that to me
18 right now?

19 A Yes, sure.

20 Q Okay, please.

21 THE MAGISTRATE: Do you have it right there in the
22 witness box with you?

23 THE WITNESS: Yeah -- no, in the chair.

24 THE MAGISTRATE: Oh, in the chair?

25 THE WITNESS: Yeah.

1 THE MAGISTRATE: You mean like where, in the
2 general, in the jury box.

3 THE WITNESS: Yes.

4 THE MAGISTRATE: Well, Officer, excuse me, pardon
5 me. Counsel Niskar, I don't have any problem if you don't
6 have any objection and the prosecutor doesn't have an
7 objection. I don't have any issue with allowing the witness
8 to go and retrieve the document. Do you have any issue with
9 that?

10 MR. NISKAR: No, I'd ask that he please retrieve
11 the document.

12 THE MAGISTRATE: Okay, well, Officer, you may go
13 ahead and do that. Just for clarity of the record, the
14 witness has stepped out momentarily of the witness box or
15 the witness stand and he is going to where he had left his
16 belongings to retrieve the document requested by Counsel
17 Niskar.

18 THE WITNESS: I'm sorry, Your Honor. I do not have
19 that copy right now with me. I could probably go -- I don't
20 know if I have it in my backpack right in my office but I do
21 have his conditions but not the signed one that he signed,
22 that the defendant signed.

23 BY MR. NISKAR:

24 Q Okay, so do you have some memory of him having signed
25 those conditions in your presence?

1 A Yes, along with another officer that was with me that
2 day.

3 Q So, when was it that you say Mr. Negron Cruz signed the
4 judgement?

5 A The first day that we met, November 15.

6 Q Okay, so on November 15, you traveled to Guarabi and
7 you were with whom, what other Probation Officer?

8 A Officer Coralís Guzman.

9 Q Okay and who else?

10 A Just the two of us.

11 Q Okay, you had previously indicated in a prior
12 informative motion that you filed with the Court that you
13 were with two other officers during your interventions with
14 Mr. Negron Cruz. So, in addition to Ms. Guzman, who was the
15 other officer that you were with?

16 A Well, on a separate day. It wasn't the same day.

17 Q Well, stick with the 15th, November 15th, you indicated
18 in your informative motion filed at document 469 on page 2,
19 that there were two other officers present during the
20 interventions. So, in plural, correct?

21 MS. HERNANDEZ: Your Honor, in the statement of the
22 motion he is reading one portion but then alleging to
23 another.

24 THE MAGISTRATE: Well, it's cross examination.
25 I'll allow the question to proceed and the witness may

1 answer.

2 BY MR. NISKAR:

3 Q So, November 15th was the first time you met Mr. Negrón
4 Cruz after he was released from custody, correct?

5 A Correct.

6 Q You appeared in Guarabí on November 15th, yourself
7 along with USPO Guzmán.

8 A Yes.

9 Q No other USPO with you.

10 A No.

11 Q Okay. When you arrived, Mr. Negrón Cruz, you said you
12 had not advised him that you were going to be arriving,
13 right?

14 A No.

15 Q That's correct?

16 A It's correct.

17 Q Okay and when you arrived, where did you go first?

18 A I went to talk to Migdalia, that's Mr. Negrón Cruz's
19 case manager, to know what was his adjustment. Those were a
20 few days before going to his room and to know which room he
21 was in.

22 Q So you went to Guarabí before --

23 A No, it's the same day.

24 Q The same day?

25 A Yes, it's the same place. It's just the administrative

1 office before going to the rooms.

2 Q So, when you arrived, what room did you go to to meet
3 Mr. Negron Cruz?

4 A I believe it was number 36.

5 Q Room number 36.

6 A Yeah.

7 Q Okay. Are there multiple levels to that building?

8 A Yes.

9 Q What floor is that on?

10 A It was like the lower level.

11 Q Okay. You're aware, are you not, that there are video
12 recording and surveillance equipment in the hallways of that
13 facility, correct?

14 A I didn't have any knowledge of that.

15 Q Okay. You didn't see the cameras in the hallway
16 facing the door?

17 A No.

18 Q No, okay. When you arrived, was the door closed or
19 open?

20 A Closed.

21 Q The door to room 36, I'm talking about.

22 A I believe it was closed, yes.

23 Q It was just the two of you, you and USPO Guzman
24 standing outside of the door?

25 A I believe Migdalia was also present.

1 Q Okay, what happened next? Did you knock on the door?

2 A Uhum and Mr. Cruz answered the door.

3 Q Okay and had you spoken with him at any time before
4 that to introduce yourself?

5 A No, that was the first time.

6 Q Would you describe for us when the door opened to room
7 36. I'd like for you to draw for us a diagram with the
8 layout of the door and the room. May I approach the
9 witness?

10 MS. HERNANDEZ: Objection, Your Honor, as to this
11 procedure relating to a sketch to be drawn at this stage.

12 MR. NISKAR: Your Honor --

13 THE MAGISTRATE: Overruled for this time being. I
14 mean, he was asked questions on direct. For example, as to
15 where exactly the laundry basket was located and I recall
16 very distinctly that he mentioned when he entered where he
17 said that it was.

18 Well, if he testified on direct as to the layout, well
19 I think it's fair for the defense on cross examination to
20 ask questions about the layout and if they want to do it
21 through a diagram, I don't have any problem with that. You
22 may do so. Objection overruled.

23 MR. NISKAR: May I approach?

24 THE MAGISTRATE: Yes, yes you may.

25 BY MR. NISKAR:

1 Q Could you draw for us --

2 THE MAGISTRATE: I'm sorry. I need you to use the
3 microphone because the proceeding is recorded. I'm sorry,
4 Officer Niskar, but we really do need you to speak through
5 the microphone.

6 MR. NISKAR: Okay.

7 BY MR. NISKAR:

8 Q Could you draw for us however you want to draw the
9 room, a square, however you want to depict the room and the
10 door, kind of like from a bird's eye view of what the
11 contents of the room were on that day when you knocked on
12 the door.

13 THE MAGISTRATE: Counsel Niskar, I'll repeat what I
14 said at the beginning during direct examination, both for
15 the government and for the defense. The document projector
16 is at your disposal. So, for example, I'm pretty sure
17 you're already aware of this but witnesses can, for example,
18 with their fingers draw on the screen, et cetera, or
19 whatever but if you want to do it this way, the traditional
20 way, that's fine. I don't have any issue with that. It's
21 your choice.

22 I just simply wanted to make sure that you're aware
23 that you have available also the document projector as an
24 alternative if you so wish.

25 MR. NISKAR: Thank you, Your Honor.

1 THE WITNESS: I'm done.

2 MR. NISKAR: You're done? May I approach?

3 THE MAGISTRATE: Yes, you may.

4 BY MR. NISKAR:

5 Q So, I'm going to show you what's been marked zoomed as
6 Defense proposed exhibit --

7 THE MAGISTRATE: Id-A?

8 MR. NISKAR: A.

9 THE MAGISTRATE: Id-A. All right, well let us go
10 ahead and mark it as Id-A and let the record reflect that I
11 believe that Mr. Niskar has placed on the document projector
12 the document that was handed to him by the witness.

13 MS. HERNANDEZ: Your Honor, so is it being marked
14 as an Id or as an exhibit because he's already publishing
15 the same without having it being admitted.

16 THE MAGISTRATE: Right now it's an Id-A. If at
17 some point the defense moves to have it admitted into
18 evidence, well we'll see but at this moment, as of right now
19 it's Id-A.

20 BY MR. NISKAR:

21 Q Can you see the document, Mr. Lozada, I have on the
22 screen here as Id-A, Defendant's Id-A?

23 A Yes.

24 Q Okay and who created this document?

25 A I did.

1 Q You created everything that's on this document,
2 correct?

3 A Yes.

4 Q All of the writing, all the sketches, all the
5 (Inaudible) except for the sticker at the bottom right
6 corner, correct?

7 A Yes.

8 Q Okay, so when you're standing at the door, you're
9 facing a window, is that correct?

10 A Yes.

11 Q Okay and the door opens which way, into the room or
12 into the hallway?

13 A I do not recall but I believe it's inside.

14 Q You believe the door opens to the inside?

15 A Yes, but I do not recall which way it opens.

16 Q Okay, and would it be fair to say that when you're
17 standing at the door you cannot see the closet, correct?

18 A Not if you're not inside the room.

19 Q Not if you're not inside the room. So, the closet
20 would not have been in plain view when you were standing at
21 the door?

22 A The what?

23 Q The contents of the closet and the hamper were not
24 in plain view when you were standing at the door.

25 A No.

1 Q Okay. The T.V., were you able to see any portion of
2 the T.V. from the door?

3 A Yes.

4 Q Yes?

5 A Uhum.

6 Q Is that a yes?

7 A Yes.

8 Q Okay and the pictures that have been offered,
9 Government's Exhibit 1 and 2 and 3, the ones that depict the
10 hot spot and the Xbox controller. Do you need to see these?

11 A No.

12 Q Okay, these are the hot spot and the Xbox controllers
13 are on what appear to be the far right side of a dresser in
14 that the television is upon, correct?

15 A Correct.

16 Q So, is it true is it not -- I'm going to re-approach
17 the witness and ask you to mark where it was that you saw,
18 if you can put an X --

19 THE CLERK: Counsel, microphone.

20 MR. NISKAR: I'm sorry.

21 BY MR. NISKAR:

22 Q I've re-approached and given you Id-A. If you could
23 put the initials or write hot spot where it is that you
24 discovered the items depicted in Government Exhibits 1, 2
25 and 3.

1 A Can I mark it with an X?

2 Q I'd prefer if you wrote, "hot spot", put an X and then
3 write, "hot spot" next to the X.

4 A Okay.

5 MS. HERNANDEZ: Your Honor, we're still not clear
6 why at this stage we're also marking, it's still an
7 identification. It has not been entered as an exhibit.

8 THE MAGISTRATE: But we're going to get there
9 though.

10 MS. HERNANDEZ: But normally they enter as an
11 exhibit --

12 THE MAGISTRATE: I understand, AUSA Hernandez but
13 again, I'm going to say to you exactly the same thing that I
14 said to AFD Lerman some while ago. See, we can reach the
15 shore on a two hour swim or a fifteen minute sprint.

16 Okay, so here's the thing, here's the thing. If you
17 want this to be marked into evidence and admit it as an
18 exhibit and frankly it would be admissible, if the defendant
19 were to choose to move to admit it into evidence, then every
20 single time that he asks the defendant to -- excuse me, not
21 the defendant, the witness to add any additional marking,
22 okay, well then now it's not Exhibit A. Now we're going to
23 have to make a photocopy and mark the copy as Exhibit A-1
24 and then additional marking, well that's going to be Exhibit
25 A-2. Another marking that's going to be Exhibit A-3.

1 Now we could be doing that and spend half an hour on
2 that or we can just simply wait until he's done with all his
3 markings and have it admitted into evidence if anybody wants
4 to move to have it admitted into evidence.

5 So, which way do you want it, the two hour swim or the
6 15-minute one?

7 MS. HERNANDEZ: Your Honor, it was our
8 understanding that in order to request the witness to
9 continue to do what he did, it should be admitted first as
10 an exhibit and not that they are publishing it, bringing it
11 in, putting it in the record as evidence and it's not even
12 an exhibit, nor do we know when we make that request at the
13 end.

14 So, we did want the fast way to it and that's why we
15 were inquiring, not because we thought it was determined to
16 include all the markings before.

17 THE MAGISTRATE: Okay, all right, again if you
18 want -- if we all want to get hyper technical, fine. I'll
19 ask right now Mr. Niskar whether he wants to admit it into
20 evidence but be on notice that then every single time that
21 there is any additional marking, then, you know, we're going
22 to have to make perhaps because I have no idea how many
23 other additional markings Mr. Niskar is going to ask the
24 witness.

25 So, if he's going to ask for example, ten more

1 markings, well, I'm going to have to ask my Courtroom Deputy
2 to make ten photocopies and each different photo copy, each
3 different photo copy is going to have a different sticker.
4 Why, because he has chosen to do it the traditional way.

5 This would not be an issue if this were to be done with
6 markings on the screen. With markings on the screen it's
7 much faster. However, I'm not here to micro manage the
8 style of cross examination.

9 He has chosen to do it the traditional way, okay, so
10 the traditional way it is. So, if you want to mark it, we
11 can mark it but then since I don't know how many additional
12 markings Mr. Niskar is going to ask the witness to make, in
13 an abundance of caution I'm going to have to ask my
14 Courtroom Deputy to make, I don't know, 10 or 15 more copies
15 of that so that we can mark them. We can do that if you'd
16 like.

17 So, question, do you want this to be marked because
18 then I would need to ask Mr. Niskar whether he wants it
19 admissible into evidence. Do you want it marked?

20 MS. HERNANDEZ: We are not the proponent, Your
21 Honor.

22 THE MAGISTRATE: Okay, well all right. Okay, well
23 then you may proceed. You may proceed.

24 MR. NISKAR: Thank you.

25 MS. HERNANDEZ: Our objection was as to the way it

1 was being -

2 THE MAGISTRATE: I understand, I understand. I
3 mean, I understand the point of what you are saying. It is
4 being published without first being formally admitted into
5 evidence but it's not exactly like we have a jury here.

6 So, in the end, in the end, if, I don't know if Mr.
7 Niskar is going to move to have this admitted into evidence
8 or not but if, yes, any markings that the witness has done,
9 all that would be admitted into evidence. All right, okay.

10 MR. NISKAR: I have just retrieved what has been
11 marked as Id-A from the witness. I did not mark anything on
12 the way back to the podium and I see now there's one change
13 that you've made, Officer Lozada. Next to the T.V. you put
14 an X and you've marked, hot spot. Correct?

15 THE WITNESS: Yes.

16 BY MR. NISKAR:

17 Q The hot spot was next to and to the side of on another
18 electronic device, correct?

19 A I don't recall.

20 Q The Xbox was on the floor next to a dresser, correct?

21 A If I could see the pictures but I don't recall.

22 THE MAGISTRATE: When you say the pictures, you
23 mean any particular exhibits?

24 THE WITNESS: Yes, the pictures, yeah.

25 MR. NISKAR: I'm going to show him what's been

1 admitted as Government's Exhibits 1, 2 and 3.

2 BY MR. NISKAR:

3 Q Let me know if that refreshes your memory.

4 THE MAGISTRATE: All right. Let the record
5 reflect that the witness has been handed Exhibits 1, 2 and
6 3.

7 MR. NISKAR: Is there a portable microphone in this
8 courtroom?

9 THE MAGISTRATE: I would gladly provide one if
10 there's one but I don't know because I move from courtroom
11 to courtroom, so I don't know but in the event --

12 MR. NISKAR: I'll just (Inaudible)

13 THE MAGISTRATE: Go ahead.

14 BY MR. NISKAR:

15 Q When you're done looking at Exhibits 1, 2 and 3, let
16 me know, please. Are you done?

17 A Yes.

18 Q Does that refresh your memory as to where the Xbox
19 console was located?

20 A I don't know where the Xbox is located. As to the
21 pictures you provided, that's I believe a back-up battery.

22 Q What is a back-up battery?

23 A The black box.

24 Q Where is the hot spot?

25 A The hot spot is just inside the dresser, on top of the

1 dressers, the sites.

2 Q Is the hot spot detected in any of these exhibits?

3 A I'm sorry?

4 Q Is the hot spot depicted in any of the government's
5 exhibits?

6 A Yes.

7 Q Which ones?

8 A Well, I don't know which one the number is it but the
9 one that you provided didn't have the hot spot.

10 Q 1, 2 and 3 did not have the hot spot?

11 A The one that you provided, I didn't see the hot spot.

12 Q Okay, I'm going to show you all of the government's
13 exhibits that have been introduced and let me know where the
14 hot spot is.

15 A Sure.

16 THE MAGISTRATE: Let the record reflect that the
17 witness has been handed Exhibits 1 through 9.

18 BY MR. NISKAR:

19 Q Okay, have you seen it?

20 A Yes.

21 Q Which numbers is the hot spot detected in?

22 A 1 and 2.

23 Q 1 and 2. Where is the hot spot in 1 and 2?

24 A Here and here.

25 Q So there's an item on top of the dresser with a green

1 light on, that's the hot spot?

2 A Yes.

3 Q Okay and it's your testimony that you could see the
4 hot spot depicted in Government Exhibits 1 and 2 from the
5 door of the room where you were standing?

6 A From the door, no.

7 Q Okay, so from the door there was nothing in plain view
8 that was contraband that you could see, correct?

9 A Not that I recall. Only the T.V. I could see the T.V.

10 Q You could see the T.V.

11 A Uhum.

12 Q But the T.V. by itself is not contraband, correct?

13 A I believe not.

14 Q Okay. I am going to return Defendant's Id-A to you and
15 ask that you put your name and date on it, all right.

16 A Okay.

17 Q Then I'm going to move for it -- let me ask you one
18 more time. This photo now that you have created, does this
19 accurately depict room 36 or the room that you visited Mr.
20 Negrón Cruz on November 15, 2023 at Guarabí Carib.

21 THE MAGISTRATE: Counsel, I'm sorry to interject
22 but you used the word photo.

23 BY MR. NISKAR:

24 Q Does this diagram or sketch that you prepared
25 accurately depict the layout of the room that Mr. Negrón

1 Cruz was living in at Guarabi on November 15?

2 A Up to my best knowledge, yes.

3 MR. NISKAR: Okay and I would move for the
4 admission of Defense Exhibit A after Mr. Lozada initials and
5 dates the form or the sketch.

6 THE MAGISTRATE: All right. I think the witness
7 needs a pen. Here, I'll try to see if we can -- do you need
8 a pen?

9 THE WITNESS: Yes.

10 THE MAGISTRATE: Okay, let's provide him with one.
11 I'm sorry, do you want him what, to sign and date?

12 MR. NISKAR: Sign and date, please. You'll let me
13 know when you finish.

14 THE WITNESS: It's the 12th, right?

15 MR. NISKAR: 2-12-2024.

16 THE MAGISTRATE: Okay, if you please show it to
17 opposing counsel. Ms. Hernandez, I believe that Counsel
18 Niskar is moving forward the admissibility of Id-A. Any
19 objection?

20 MS. HERNANDEZ: No, Your Honor.

21 THE MAGISTRATE: Admitted Exhibit A.

22 (Identification A was
23 admitted into evidence)

24 MR. NISKAR: Will we need another sticker for this?

25 THE MAGISTRATE: Yes.

1 BY MS. NISKAR:

2 Q So you're standing at the door looking in with USPO

3 Guzman, correct?

4 A Yes.

5 Q What was your basis for going in the room?

6 A To conduct a home inspection of the room.

7 Q Okay, what was it that you needed to inspect?

8 A We conduct home inspections to see where he's living
9 and all the items that are present in the room. Usually
10 it's in a house and in the defendant's room and every room,
11 bathrooms, but in this particular case, it's the room that's
12 basically his house.

13 Q So, at what point did you see the hot spot that you say
14 you saw in Government's Exhibit 1 and 2?

15 A When I was conducting the home inspection.

16 Q Okay. Who has possession of this hot spot now?

17 A Me.

18 Q You do here in the United States Probation Department?

19 A Well, we don't have an office right now, so --

20 Q It's in the custody of the United States Probation --

21 A It's in my custody, yes.

22 Q At what point did this turn from a home inspection to
23 a search? When did this turn to a search?

24 A As soon as I saw the plain view contraband.

25 Q What plain view contraband?

1 A The hot spot.

2 Q Okay and how did you know what this was?

3 A I asked Mr. Negrón Cruz when I observed it at plain
4 view.

5 Q Okay anyone else that was in the room with him on that
6 day?

7 A Do you mean other residents?

8 Q Yes.

9 A No.

10 Q Anyone else that was assigned to that room residing
11 with him?

12 A Not to my best of knowledge.

13 THE MAGISTRATE: All right, AFD Niskar, since I
14 don't want to rush you through your cross examination. I
15 want to give you a fair opportunity to cross examine the
16 witness. I believe that since it's around almost 12:30
17 p.m., this might be a good moment to recess and we're going
18 to reconvene.

19 So we're going to meet again at 1:45 p.m. Okay, it's
20 almost 12:30 p.m. right now. We're going to recess and
21 we're going to continue with the cross examination of the
22 witness.

23 Witness, I'm going to repeat the same thing that I said
24 when we had the previous break. During this recess do not
25 talk with anybody about matters related to this case or to

1 your testimony because you're still not done with your
2 testimony.

3 I believe that Mr. Niskar still wants to ask you some
4 additional questions on cross examination. So, you may
5 enjoy the recess just like anybody else but do not talk with
6 anybody about matters related to this case or your
7 testimony.

8 Any exhibits that have already been admitted into
9 evidence must remain with the Courtroom Deputy Clerk.
10 Okay, so before you exit, please leave any exhibits that
11 have already been admitted with Ms. Cruz. So, we'll
12 continue then at 1:45 p.m. The Court is in recess.

13 MR. NISKAR: Thank you, Your Honor.

14 (The hearing adjourned at 12:30 p.m.)
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1 AFTERNOON SESSION 1:47 p.m.

2 THE MAGISTRATE: Very well. AFPD Niskar, you
3 may continue with the cross examination of the witness.

4 MR. NISKAR: Thank you, Your Honor.

5 CROSS EXAMINATION (Continued)

6 BY MR. NISKAR:

7 Q Officer Lozada, when we broke we were talking about you
8 entering the room to conduct your home inspection. Do you
9 remember that?

10 A On what date?

11 Q On November 15th, 2023.

12 A Yes.

13 Q So, is it the practice of the Probation Office to
14 conduct a home inspection the first time that you arrive at
15 a person's residence?

16 A Yes.

17 Q Then after that are there further home inspections or
18 would those be limited by the search conditions?

19 THE CLERK: Excuse me, Your Honor, the
20 defendant cannot hear the interpreter.

21 THE MAGISTRATE: Let's change, perhaps check the
22 unit if it needs replacement.

23 MR. NISKAR: May I?

24 THE MAGISTRATE: Yes, you may proceed.

25 BY MR. NISKAR:

1 Q Do you remember the question?

2 A Can you repeat it, please.

3 Q Is it the practice of the Probation Department to
4 conduct the home inspection the first time you visit a
5 supervisee?

6 A Yes.

7 Q Then after that, are there further home inspections or
8 are those limited by the search condition?

9 A There are further home inspections. It's a routine
10 part of the supervision process.

11 Q Okay.

12 A Search is another different.

13 Q Okay, is there a condition that requires someone to
14 allow a home inspection?

15 A Yes, actually, well a conditional supervision like
16 imposed?

17 Q Yes.

18 A Not that I remember.

19 Q Okay, so your ability to enter the room to conduct the
20 home inspection is governed by what authority?

21 A Probation.

22 Q But who gives you the authority -- if someone doesn't
23 want to consent to allow you to enter their home for a home
24 inspection, what is the recourse that Probation has?

25 A I mean, according to our policy, a home inspection is

1 mandatory for us to know where the defendant is living and
2 the conditions of the defendant is living. So --

3 Q Okay, but you're aware of Guarabi, correct?

4 A I'm sorry?

5 Q You were the one that placed Mr. Negrón Cruz in
6 Guarabi.

7 A Yes, because of its --

8 Q So you were satisfied, were you not, that Guarabi was
9 a residence that was suitable for Mr. Negrón Cruz, correct?
10 Yes or no?

11 A Yes, correct.

12 Q You are aware, you had done previous inspections at
13 Guarabi, correct, home inspections?

14 A In Guarabi?

15 Q In Guarabi.

16 A In different rooms but not that specific room.

17 Q Okay, so, how long had Mr. Negrón Cruz been in room 36
18 before November 15?

19 A Before November 15, since his release from custody.

20 Q He was released on November 9, correct.

21 A Yes.

22 Q So, again, there was no authority you had pursuant to
23 a court order to inspect the home of Mr. Negrón Cruz,
24 correct?

25 A The U.S. Probation Office or officers do not need a

1 court order to inspect or take supervision activities.

2 Q You don't?

3 A Court order, like a search warrant or something like
4 that?

5 Q Yes.

6 A No.

7 Q Well, let's talk about home inspection only.

8 A Uhum.

9 Q What authority and again, if you don't have authority
10 or you don't know of a law or a search condition that's part
11 of this case, let me know, but what authority in this case
12 did you have to enter Mr. Negron Cruz' room without his
13 consent?

14 A As part of his condition of supervision --

15 Q There is and I'm going to show you the multiple orders
16 in this case. I'm going to show you document 143 and
17 document 429 and I'd ask you to point out to me if you
18 could, where you had the authority to make a home
19 inspection. Okay?

20 A Sure. May I respond?

21 Q When you're done.

22 A Yeah.

23 Q (Inaudible) lectern. I'm going to read to you

24 (Inaudible)

25 A Uhum, yeah.

1 MS. HERNANDEZ: Your Honor, the document I believe
2 was not to refresh the recollection but requested
3 specifically relating to that --

4 THE MAGISTRATE: What is your objection?

5 MS. HERNANDEZ: That if it's to be read from the
6 document itself then the witness should be allowed to have
7 the document.

8 MR. NISKAR: The question is -

9 THE MAGISTRATE: Well, I mean it's -- as far as I
10 know, it's not being offered as an exhibit and as far as I
11 know, it also has not been offered to refresh recollection.
12 Now, he already approached. He already approved the
13 document, so let him answer the question.

14 Now had you asked the question before or raised the
15 objection before, then the question would have been okay or
16 are we dealing here with something that the defense wishes
17 to introduce into evidence or something that the defense
18 wanted to use for refreshing recollection? But it's a
19 little bit too late for that.

20 The witness has already seen the document and has
21 already, the document has already been retrieved. You may
22 ask your question.

23 BY MR. NISKAR:

24 Q So, what authority do you have to make an inspection of
25 Mr. Negron Cruz's home?

1 A Standard condition number 6.

2 Q Okay, standard condition 6 is what?

3 A I cannot verbatim the whole sentence but it stated that
4 he shall reside in an approved place by the Probation
5 Officer and if the Probation Officer observes something or
6 contraband at plain view, he can seize it.

7 Q Okay, so we're not talking about plain view. We're
8 talking about home inspection. You would agree, would you
9 not, standard condition 6 is that Mr. Negron Cruz must allow
10 the Probation Officer to visit you at your home. Correct?

11 A Yes.

12 Q It doesn't say anything about an inspection outside of
13 reasonable suspicion or plain view, correct?

14 MS. HERNANDEZ: Objection, Your Honor. He is not
15 reading standard condition number 6 in its entirety.

16 THE MAGISTRATE: I don't know. You can deal with
17 that. If you need to request leave for direct on that
18 particular point, I'll let you to. Go ahead, you may
19 proceed.

20 BY MR. NISKAR:

21 Q The document that the government asked the Court to
22 take judicial notice of earlier today states on page 5 of 6,
23 under standard condition 6, I believe that the Court has
24 taken judicial notice of this.

25 "You must allow the Probation Officer to visit you at

1 any time at your home or elsewhere and you must permit the
2 Probation Officer to take any items prohibited by the
3 conditions of your supervision that he or she observes in
4 plain view." Okay?

5 So, from the doorway of room 36, on November 15, you
6 already told us earlier today you saw nothing in plain view
7 that was contraband, correct?

8 A From the door?

9 Q Yes.

10 A Yeah.

11 Q Okay, so now standard condition 6, you would agree does
12 not say you can make an inspection of the home, correct?

13 A Well, I can further --

14 Q Standard condition 6, yes or no?

15 MS. HERNANDEZ: Let the witness answer before you
16 interrupt him.

17 THE WITNESS: I cannot answer that question with a
18 yes or no without explaining the condition entirely.

19 BY MR. NISKAR:

20 Q Well, no, I need you to answer yes or no whether
21 standard condition 6 allows you to make an inspection of the
22 home without viewing anything in plain view.

23 MS. HERNANDEZ: Objection, Your Honor. If the
24 witness may be allowed to answer -

25 MR. NISKAR: Well, I need to finish my question

1 first.

2 THE MAGISTRATE: Okay, well then finish your
3 question.

4 BY MR. NISKAR:

5 Q Does standard condition 6 allow you, 6 only, allow you
6 to make an inspection and search of a defendant's home?

7 A Search is a completely different --

8 Q Okay, so let's start with search. Does it allow you to
9 make a search without consent?

10 A Can you rephrase that question?

11 Q Does it allow you to make a search without the consent
12 of the defendant?

13 A If reasonable suspicion is arise, that search can be
14 conducted without his consent.

15 Q At the doorway you already told us on November 15th,
16 you had no reasonable suspicion to enter -- to search that
17 apartment, correct?

18 A I had -- I was conducting supervision activities which
19 includes go visit him in his residence and in this case his
20 room.

21 Q You can visit him. I agree with you, standard
22 condition 6 -

23 MS. HERNANDEZ: Your Honor, at this time we would
24 object as to be beyond the scope of the purpose of this
25 hearing because it seems that he is now trying to dispute

1 search related questions and consent and this is all
2 relating to a probable cause determination of conditions of
3 supervised release.

4 His questions appear geared not towards whether there
5 were items found during that inspection of the room but
6 whether it was proper or not the steps that he followed in
7 relation to that, which we submit from our point of view,
8 they are and they're clear but this is beyond the scope of
9 this hearing.

10 MR. NISKAR: We disagree. The government and
11 Probation are making an argument that the defendant did not
12 follow the instructions of the Probation Officer; that he
13 had refused to allow this Probation Officer to enter his
14 residence; that this officer used some type of coercion to
15 tell him he had to allow him to answer to conduct an
16 inspection for a search when he had no authority to do
17 either. So, I should be allowed to --

18 THE MAGISTRATE: You're allowed to ask questions as
19 long as you don't become argumentative with the witness.
20 But, yes, I will allow you to ask the questions.

21 MR. NISKAR: Thank you.

22 BY MR. NISKAR:

23 Q So, standard condition 6, Officer Lozada, you would
24 agree, only allows you to visit Mr. Negron Cruz at his home
25 or elsewhere. Correct?

1 A Can you rephrase the question?

2 Q I can't. There's only one way I can phrase that
3 question.

4 A Okay, but can you repeat it.

5 THE MAGISTRATE: Well, just a moment. If you do
6 not understand a question, you can tell the attorney that
7 you don't understand a question. However, if you do
8 understand the question, answer it.

9 BY MR. NISKAR:

10 Q Okay, do you understand the question?

11 A I don't understand the question.

12 Q Okay, my question is this. Does standard condition 6
13 allow you to enter a defendant's residence to make a home
14 inspection, not a search pursuant to the search condition,
15 pursuant to plain view, pursuant to reasonable suspicion.
16 We're not talking about that.

17 We're talking about does standard condition 6 allow you
18 to make a home inspection of a person's home, papers,
19 affects and property?

20 A Well, inspect papers, no, but inspect the property,
21 yes.

22 Q Where does it give you that authority?

23 A Well, the conditions say that he has to allow the
24 Probation Officer to enter his property.

25 Q It doesn't say that. Does it say that?

1 A I believe it says.

2 Q Okay, I'm going to show you. I'm going to approach.

3 May I approach?

4 MS. HERNANDEZ: Your Honor, it would all be more
5 simple if we can take judicial notice of the condition
6 number 6 exactly how it's stated.

7 THE MAGISTRATE: Counsel, there is no point in you
8 starting an argument with the witness as to what the
9 standard condition says or does not say. I can read it for
10 myself and I can draw my own conclusions based on what the
11 witness has answered and what does the standard condition
12 number 6 say.

13 BY MR. NISKAR:

14 Q So, you were operating under the assumption that
15 standard condition 6 gave you the authority to enter Mr.
16 Negrón Cruz' apartment and make a home inspection.

17 A As part of the supervision activities, yes.

18 Q Any other condition and any other order of the Court
19 that you believed allowed you to enter the apartment and
20 make a home inspection that day?

21 A Not to my knowledge right now.

22 Q Okay. So, when Mr. Negrón Cruz, he initially told you
23 you weren't going to come in, correct?

24 A I don't recall that.

25 Q He told you that he was not doing anything wrong.

1 A On November 15?

2 Q Yes.

3 A Okay.

4 Q Correct?

5 A I don't recall that but I do recall what you say about,
6 "I'm not doing anything wrong."

7 Q Okay. You eventually entered the apartment, correct?

8 A Yes.

9 Q That was not because he consented but because you told
10 him you had the authority to enter, correct?

11 A Yes, as part of our supervision process, yes.

12 Q You earlier stated that after you entered and
13 discovered the hot spot and the Xbox, that you also found
14 a phone that you described as hidden inside of a laundry
15 basket, correct?

16 A Correct.

17 Q Mr. Negron told you where that cell phone was, correct,
18 where you would find it.

19 A After asking several times, yes.

20 Q Okay and that phone was located in a laundry hamper
21 with other belongings of his, correct?

22 A Yes.

23 Q There was a wallet that was in that basket?

24 A I don't recall the wallet.

25 Q You created crono notes in this case related to your

1 response and arrival to Guarabi on November 15, correct?

2 A Yes.

3 Q Nowhere in your crono notes do you ever say that this
4 phone was hidden or that Mr. Negron hid the phone, right?

5 A I do not recall stating that, the same words.

6 Q The photos that were taken on November 15th were taken
7 by your cell phone, you stated earlier?

8 A Yes.

9 Q That phone is a personal phone or is that a phone
10 issued by the United States Probation Department?

11 A It's a government phone issued by the United States
12 Probation Office.

13 Q Okay and are those pictures still located locally on
14 your telephone?

15 A That's correct.

16 Q You have not deleted them from your phone.

17 A No.

18 Q Okay, I will ask that you do not delete them from your
19 phone.

20 MS. HERNANDEZ: Objection, Your Honor, as to the
21 attorney now giving instructions to the witness --

22 MR. NISKAR: I didn't instruct. I merely made a
23 request. I would ask that you not delete the pictures from
24 your phone. Is that okay with you?

25 MS. HERNANDEZ: That is not a question that is

1 being posed, Your Honor. That is providing instructions to
2 the Probation Officer at this point.

3 THE MAGISTRATE: Look let's try to make this easy.
4 Do you want a court order requiring this witness not to
5 delete those phones.

6 MR. NISKAR: I would like a preservation.

7 THE MAGISTRATE: Okay, well granted.

8 MS. NISKAR: Thank you, Your Honor.

9 THE MAGISTRATE: Officer, do not delete the
10 photographs that you took, I believe it's November 15th?

11 THE WITNESS: November 15th.

12 THE MAGISTRATE: November 15th, 2023. Do not
13 delete those photographs from the cell phone until these
14 proceedings have concluded or unless you receive a different
15 directive from the Court.

16 MR. NISKAR: Thank you, Your Honor.

17 THE WITNESS: Noted.

18 BY MR. NISKAR:

19 Q Did you take any other photos other than these nine?

20 A I do not recall.

21 Q Okay. I believe that, Your Honor, if there were any
22 other photos that were taken on that day, they would be
23 covered by the order that you just ruled on.

24 THE MAGISTRATE: To make it very clear so that
25 there is no ambiguity, if in addition to these nine

1 photographs, you have other photographs regarding this visit
2 on November 15th, 2023 at Guarabi, if you have any
3 additional photographs aside from the ones that have been
4 marked into evidence as Exhibit 1 through 9, preserve them
5 in your phone.

6 Do not, do not delete them until the conclusion of the
7 revocation proceedings or unless the Court gives you an
8 order to the contrary.

9 THE WITNESS: Noted.

10 BY MR. NISKAR:

11 Q Did you see the other Probation Officer that you were
12 with also taking pictures?

13 A No.

14 Q Okay. Did you take any audio recordings of your
15 interactions that day with Mr. Negrón?

16 A No.

17 Q Did you take any video recordings of any of the
18 conversations with Mr. Negrón?

19 A No.

20 Q Did you take any recording surreptitiously, meaning
21 without Mr. Negrón knowing, either an audio or video?

22 A No.

23 Q The phone that you found in the laundry basket, you
24 testified earlier that you compared it to the box that was
25 found inside of the -- underneath the laundry basket?

1 A I compared?

2 Q You compared the style. Ms. Hernandez asked you if
3 both phones were both the same type of cell phone. Do you
4 remember that?

5 A Not -- barely.

6 MR. NISKAR: May I see the Government's Exhibit --
7 BY MR. NISKAR:

8 Q Government Exhibit 9 depicts the white box that was
9 underneath the (Inaudible) hamper. Do you see this?

10 A Yes.

11 Q Ms. Hernandez asked you if you compared the box of the,
12 to the (Inaudible) phone or the blue box in the top left
13 corner here.

14 A Uhum.

15 Q With the phone that you found in the laundry basket.
16 You remember that on direct exam?

17 A Yes.

18 Q Do you remember what your testimony was?

19 A That both are the same kind of telephones.

20 Q Okay, the same kind of phone. Did you compare the
21 IMEI numbers?

22 A No.

23 Q Did you compare the sim card numbers?

24 A No.

25 Q Do you know the date of the manufacture, the date that

1 the phone was manufactured? Do you know the date the phone
2 was manufactured that was originally contained in either of
3 those boxes?

4 A No.

5 Q Do you know from where either of those phones that have
6 boxes in them were purchased?

7 A No.

8 Q Do you know where the phone that was in the hamper was
9 purchased?

10 A No.

11 Q Do you know where the hot spot was purchased?

12 A No.

13 Q Have you done any forensic analysis of the hot spot?

14 A No.

15 Q Have you done any forensic analysis or extraction of
16 the telephone in the hamper?

17 A Only a manual extraction.

18 Q That manual extraction consisted of doing what?

19 A Just to see if the cell phone has internet, if the cell
20 phone has any social media, any user names or any e-mail
21 accounts or any conversations, any different applications of
22 messaging.

23 Q Okay. When you say if the phone has internet, what do
24 you mean?

25 A That is capable to connect to the internet and has --

1 Q How does the phone -- do you know how the phone
2 connects to the internet?

3 A I do not know.

4 Q So how would you --

5 A I mean, I do know that it has a carrier, a cell phone
6 carrier and that the same connects to different platforms
7 that will need internet in order for them to work but I am
8 not an expert in internet nor any cell phone devices.

9 Q So then how can you testify here today that this phone
10 was capable of connecting to the internet?

11 A I mean, it's a pretty common knowledge. Everybody here
12 has a telephone and you can test the cell phone if it has
13 internet or not. First you start by looking at the carrier,
14 like in this case T-Mobile or Claro or --

15 Q Which phone are we talking about?

16 A For the one seized.

17 Q The one in the hamper.

18 A Correct.

19 Q Okay, so one in the hamper, you retrieved it from the
20 hamper --

21 A Uhum.

22 Q You took it back to your office.

23 A Correct. Well, we don't have an office.

24 Q You took it back to your work space?

25 MS. HERNANDEZ: Your Honor, the witness was

1 answering the particular question and he interrupted for
2 additional questions.

3 THE MAGISTRATE: Let's proceed, proceed. Go ahead.

4 BY MR. NISKAR:

5 Q I think you ended and if I cut you off, please let me
6 know but I thought what you said was everybody knows how to
7 connect to the internet, correct?

8 A I mean it's common knowledge when your telephone is
9 connected or not connected to the internet. Applications
10 don't work -- the majority that requires internet. Browsers
11 don't work, so yeah.

12 Q So, did this phone have an IMEI card in it?

13 A Yeah, I believe so.

14 Q You believe or you know?

15 A I think -- I mean what you're referring to IM, the sim
16 card?

17 Q Yes.

18 A Yes, it has a sim card.

19 Q Okay and the service was through who? That sim card
20 service was through what carrier?

21 A I believe it says Claro.

22 Q Claro. You believe?

23 A Yeah, I'm not sure right now but if I can see my
24 chronological notes that you have, there is the carrier.

25 Q Okay and you made an inspection back in your work space

1 by doing what?

2 A By looking through the phone, look at the message,
3 photos, social media, any user names or any blogs that he
4 might have.

5 Q Did you connect to the internet on this phone?

6 A With the internet of the phone, yes.

7 Q Using the phone, you connected to the internet using
8 Mr. Negrón's phone?

9 A Yes.

10 Q Without putting the phone in any type of safe mode or
11 anything like that.

12 A The telephone was in airplane mode. In order to verify
13 it, we have to place it back to the carrier.

14 Q Okay --

15 A In order to verify if the telephone actually has
16 internet we have to actually start the telephone without the
17 airplane mode.

18 Q You did this without having any training or experience
19 in cell phone maintenance and operation?

20 A Yes.

21 Q Your office has someone that's employed by the United
22 States --

23 MS. HERNANDEZ: Your Honor, again objection, beyond
24 the scope.

25 THE MAGISTRATE: Overruled. You may proceed.

1 BY MR. NISKAR:

2 Q Did you call your -- the United States Probation
3 Department has an employee that's assigned and designated to
4 assist in extractions and searches of electronic devices,
5 correct?

6 A Yes, correct.

7 Q Did you and did you make an effort to contact that
8 person before you, yourself, made the examination of this
9 phone?

10 A So, since we don't have an office, our lab, forensic
11 lab is located in the second floor in our office, so our
12 instructions were, if you find a telephone that is a
13 contraband, you might have to do a manual inspection because
14 we don't have longer that equipment available to do that.

15 Q Who was with you when you made this manual inspection
16 of the phone?

17 A I was alone.

18 Q Where did you do the manual inspection of the phone?

19 A In my house.

20 Q Using your home's WiFi?

21 A No. It was in airplane mode and then to activate it,
22 it was under the internet of the cell phone itself.

23 Q On November 28th you scheduled an appointment with Mr.
24 Negrón Cruz to install the electronic monitoring system on
25 his cell phone, correct?

1 A Correct.

2 Q So, thirteen days or two weeks later the Probation
3 Department is all right, is satisfied with Mr. Negrón Cruz
4 having a cellular phone and having this surveillance or --

5 A Monitoring.

6 Q Monitoring system installed on it, correct?

7 A So --

8 Q Is that correct, yes or no?

9 A I didn't understand the question. I thought it was me
10 explaining the process.

11 Q The question is, two weeks after you found a phone
12 inside of Mr. Negrón Cruz' apartment, you are assisting him
13 with allowing him to have a cellular phone.

14 A Yes.

15 Q Making sure he does so according to the rules.

16 A Correct.

17 Q Okay, but on that day he -- the software could not be
18 installed on the phone.

19 A On December 7.

20 Q On December 7, it couldn't be installed, correct?

21 A Correct.

22 Q Because the phone wasn't compatible.

23 A Correct.

24 Q You then about a week later make another home visit to
25 Mr. Negrón Cruz, right?

1 A Correct.

2 Q On this day, your purpose of going to Guarabi was for
3 what?

4 A Supervision process.

5 Q Okay, to do what?

6 A Visit him, how's he doing, ask if he has a stable
7 employment, basically just going around the supervision
8 activities.

9 Q Did you search the home on December 5th?

10 A On December 5th, if I searched the home, no.

11 Q Yeah, the room.

12 A Searched, no.

13 Q Okay. On January 3rd, you again made contact with Mr.
14 Negron at Guarabi, correct?

15 A Correct.

16 Q Again, you called this a home inspection again,
17 correct?

18 A Correct.

19 Q Your authority for doing a home inspection was based
20 again on standard condition 6?

21 A Correct.

22 Q For entering the room in the apartment, your basis was
23 based upon standard condition 6?

24 A Yes and supervision process activities.

25 Q Standard condition 6 for making a home inspection?

1 MS. HERNANDEZ: Objection, Your Honor. The witness
2 has answered on various occasions to this question.

3 MR. NISKAR: But then he elaborated at the end and
4 I think what the witness said was, yes, standard supervision
5 process.

6 THE MAGISTRATE: I'm sorry, I'm sorry, yes and the
7 supervision process?

8 MS. HERNANDEZ: The standard supervision --

9 MR. NISKAR: The standard supervision process.
10 Okay.

11 THE MAGISTRATE: Okay.

12 MS. HERNANDEZ: That was his response.

13 BY MR. NISKAR:

14 Q So, it's not the standard supervision process that
15 gives you authority to search someone's residence, correct?

16 MS. HERNANDEZ: Objection, Your Honor.
17 Argumentative.

18 THE MAGISTRATE: Sustained.

19 BY MR. NISKAR:

20 Q What authority gave you -- what authority did you have
21 for making the search of the home on this date, on January
22 3rd?

23 A Part of the supervision process is to make home
24 inspections and visit Mr. Negron Cruz at his residence.

25 Q What is -- you keep saying home inspection. What's

1 your definition of a home inspection?

2 A It's simply enter the room or enter the house and just
3 look around. We are not -- in a home inspection you cannot
4 touch or move anything unless you have reasonable suspicion
5 that contraband was found.

6 Q Is it your belief that Mr. Negron was required to let
7 you in on January 3rd, to the home -- to the room?

8 A It's part of the condition that he has to allow the
9 Probation Officer to enter his room -- his residence.

10 Q To enter the residence.

11 A Uhum.

12 Q Is that a yes?

13 A Yes, enter the residence.

14 Q You testified earlier that you had received both
15 incident reports and monthly treatment reports from Guarabi.
16 Correct?

17 A Correct.

18 Q You're aware that you have not sent the defense any
19 incident reports, correct?

20 A I believe that I sent it, yes.

21 Q You sent us, I believe, three monthly treatment
22 reports.

23 A Before that.

24 Q Before that you sent us a three-page document from
25 Guarabi.

1 A Uhum. That's the incident report.

2 Q So you just received one incident report and three
3 monthly treatment reports.

4 A Correct.

5 Q Nothing more?

6 A Nothing more.

7 Q Is the United States Probation Office also supervising
8 a person by the name of Jose Rivera Torres that's mentioned
9 in your informative motion?

10 A Is that the one who reside with him in his room, with
11 Negron Cruz' room?

12 Q I don't know. It's contained in your motion at
13 document 439, that you alleged that Mr. Cruz has associated
14 with Mr. Jose Rivera Torres.

15 A In which he's a person convicted for --

16 Q Transportation of --

17 A Yeah, he's under supervision of the United States
18 Probation Office.

19 Q By you personally?

20 A No.

21 Q By which officer?

22 A I believe it's Officer Emanuel Maldonado.

23 Q Who placed Mr. Rivera Torres at Guarabi?

24 MS. HERNANDEZ: Objection, Your Honor, beyond the
25 scope.

1 MS. NISKAR: I'll withdraw the question.

2 THE MAGISTRATE: Okay, well, withdrawn.

3 BY MR. NISKAR:

4 Q You have no information that Mr. Negron Cruz and Jose
5 Rivera Torres were associating at Guarabi because of
6 anything unrelated to their placement there. You
7 understand?

8 A The only information that I have is Ms. -- the case
9 manager from the Guarabi stated that on multiple occasions
10 they go outside of the center together.

11 Q Okay and --

12 A Besides, you know --

13 Q Do you have any information that their cases were
14 previously related?

15 A No.

16 Q That they in any way transferred obscene material or
17 sexually explicit material between each other.

18 A No.

19 Q That they are in any way related by blood.

20 A No.

21 Q Or marriage.

22 A No.

23 Q That they're friends or acquaintances apart from
24 Guarabi.

25 A No.

1 Q It's true, is it not, that you were the one that asked
2 Guarabi to author the incident report, correct?

3 A I asked for an incident report.

4 Q Prior to that you had not received any incident reports
5 from Guarabi about Mr. Negron.

6 A Verbally, not written.

7 Q Okay and are those verbal incident reports contained in
8 cronos notes in other parts of your file?

9 A I do not recall.

10 MR. NISKAR: May I have one second, Your Honor?

11 THE MAGISTRATE: Yes.

12 MR. NISKAR: I have no further questions. Thank
13 you, Your Honor, for your indulgence.

14 THE MAGISTRATE: AUSA Hernandez, during cross
15 examination there was a particular point that I remember you
16 raised an objection and I said that if you wanted to address
17 that on redirect that I would grant you leave to redirect.
18 So, if you wish to redirect, you may. If you don't wish,
19 then I'll excuse the witness.

20 MS. HERNANDEZ: Yes, Your Honor. We just have a
21 couple of questions.

22 THE MAGISTRATE: Okay, so you want to redirect.
23 Go ahead.

24 REDIRECT EXAMINATION

25 BY MS. HERNANDEZ:

1 Q Looking at what has been identified as Defendant's
2 Exhibit number A, is that a square room?

3 A Yes.

4 Q Once you enter the room, are you able to visualize
5 everything that's in the room?

6 A Once I enter, yes.

7 Q Does the closet have any doors?

8 A No.

9 Q Now, the T.V. that you indicate is to the left side,
10 is that a Smart T.V.?

11 A Yes.

12 Q Was it connected to the hot spot?

13 A As stated by Mr. Negrón Cruz, yes.

14 Q Was there also a play station there?

15 A Xbox gaming console.

16 Q An Xbox gaming console. Was that Xbox gaming console
17 connected to the hot spot and to the Smart T.V.?

18 A According to Mr. Negrón Cruz, yes.

19 MS. HERNANDEZ: As to the clarification, Your
20 Honor, at this time we would request that the Court take
21 notice again of 429 in page 5, it includes the standard
22 conditions of supervision and since questions have been
23 posed relating to that, we would request that the Court take
24 notice of standard condition number 4, 5, 6 and 7, which all
25 relate to the standard conditions of supervision.

1 THE MAGISTRATE: I do take judicial notice of the
2 entire contents of the judgement in Docket 429, including
3 those particular provisions that you have just mentioned.

4 MS. HERNANDEZ: No further questions, Your Honor.

5 THE MAGISTRATE: You're excused.

6 THE WITNESS: Thank you, Your Honor.

7 (Witness excused)

8 THE MAGISTRATE: Does the government have any
9 additional witnesses?

10 MS. HERNANDEZ: Yes, Your Honor. At this time the
11 United States will call Coralys Guzman.

12 THE MAGISTRATE: Very well. Let's place the
13 witness under oath.

14 (The witness was duly sworn)

15 Whereupon,

16 CORALYS GUZMAN

17 was called as a witness and after having been first duly
18 sworn, was examined and testified as follows:

19 THE MAGISTRATE: AUSA Hernandez, your witness for
20 direct examination.

21 DIRECT EXAMINATION

22 BY MS. HERNANDEZ:

23 Q Will you please state your full name for purposes of
24 the record.

25 A Coralys Guzman, U.S. Probation Officer, for the record.

1 Q Where do you work as a U.S. Probation Officer?

2 A I work at the District of Puerto Rico.

3 Q For how long have you been working as a Probation
4 Officer?

5 A A bit over two years.

6 Q I'm going to call your attention particularly to
7 November 15, 2023. On that date did you participate in any
8 manner with the supervision of Alexis Negrón Cruz?

9 A I did.

10 Q Do you see that person in court here today?

11 A I do.

12 Q Can you please point to the person and identify him.

13 A Yes. He's over there.

14 Q You can say his characteristics.

15 A Yes, he's using a beige or cream overall and a headset.

16 MS. HERNANDEZ: Let the record reflect that the
17 witness has identified the defendant, Alexis Negrón Cruz.

18 THE MAGISTRATE: The record shall so reflect.

19 MR. NISKAR: Your Honor, may we have sequestration
20 while this witness is testifying? There's another raised
21 just like fact witness that's currently in the courtroom,
22 Mr. Lozada, that's going to be hearing the testimony of
23 another fact witness. We would ask that Mr. Lozada be
24 sequestered at this time.

25 THE MAGISTRATE: Well, Officer Lozada is the one

1 that you're asking to be --

2 MR. NISKAR: Yes.

3 THE MAGISTRATE: Do you have an objection to this
4 request?

5 MS. HERNANDEZ: Well, Your Honor, procedurally we
6 do in the sense that that is the supervising officer and
7 even in criminal cases, the case agent is allowed to remain
8 in the courtroom. Nevertheless, if it will accelerate the
9 proceedings, we have no objection for this moment.

10 THE MAGISTRATE: Okay, well in view that --

11 MS. HERNANDEZ: Without renouncing to any statement
12 that we have made whether it's proper or not that a
13 Probation Officer that's supervising remain in the
14 courtroom.

15 THE MAGISTRATE: Okay, understood, understood that
16 you are reserving your rights accordingly. Officer Lozada,
17 please, if you could step out of the courtroom in view that
18 the government is amenable to proceed under these
19 circumstances.

20 You may proceed with your examination of the witness
21 and for clarity of the record, Officer Lozada, has just
22 stepped out of the courtroom. He's not in the courtroom
23 right now. So, you may proceed with the examination of the
24 witness, AUSA Hernandez.

25 BY MS. HERNANDEZ:

1 Q Yes, November 15, 2023.

2 A Yes.

3 Q Can you tell us what, if any, was your participation
4 on that date relating to the supervision of Alexis Negron
5 Cruz?

6 A Yes, we were conducting an initial visit to the client
7 at Guarabi Carib, which is a housing -- it's not treatment
8 but it's a housing arrangement that we do. So, upon
9 arrival --

10 Q Who were you with?

11 A Officer Lozada.

12 Q Was that the supervising officer?

13 A Yes, sure.

14 Q What was your role?

15 A I was a secondary officer.

16 Q What happened upon arrival at Guarabi?

17 A We met with Migdalia Gonzalez, that's one of the case
18 managers. She directed us towards the client's room.
19 Officer Lozada knocked on the door and the client answered
20 and opened the door for us.

21 After that, Officer Lozada started to use officer
22 clarification, a role clarification, as we usually do in
23 initial visits and the client rapidly stated that Officer
24 Lozada couldn't take a UA sample, urinalysis, because it
25 wasn't his condition, like the condition was waived for him

1 and he stated, "ya fallastes" or, "you already failed."

2 Officer Lozada --

3 THE MAGISTRATE: I'm sorry. I couldn't hear what
4 you just said. What is it that he said?

5 THE WITNESS: "Ya fallastes" or --

6 THE MAGISTRATE: I am sorry. I need you to testify
7 in English.

8 THE WITNESS: Yes. He said, "ya fallastes" or,
9 "You already failed."

10 THE MAGISTRATE: You may proceed.

11 BY MS. HERNANDEZ:

12 Q Who said that?

13 A The client, Mr. Negron.

14 Q To whom?

15 A To my partner, Officer Lozada.

16 Q What happened after?

17 A Officer Lozada clarified that he hadn't failed to this
18 point since he hadn't taken any sample and he wasn't going
19 to and he started to review the conditions of supervised
20 release as we usually do in initial visits.

21 The client kept making interactions to make specific
22 statements in regards to previous supervision experiences
23 and Officer Lozada kept redirecting the conversation towards
24 reviewing the conditions of release and talking about what
25 we usually talk in initial visits, including clarifying our

1 role as officers and his role as a client.

2 Q What did you observe to be the attitude of the
3 defendant at that stage?

4 A It was confrontational and up to a point he started to
5 be a little bit agitated as well, defensive I would say, and
6 again he kept talking and going on about previous
7 experiences and talking about what was fair and what wasn't
8 fair and Officer Lozada kept redirecting him and asking him
9 to please stay on topic and not to discuss previous
10 experiences or court matters at that time.

11 Q During that entry to the room what, if anything, were
12 you able to observe?

13 A I saw a Smart T.V., an Xbox, that's a gaming console,
14 and what appeared to be like a router or a hot spot of some
15 kind.

16 Q Was that visible within the room?

17 A Yes, it was just on top of the dresser.

18 Q Subsequent to that, was anything else found in the
19 room?

20 A Yes, yes.

21 Q What was that?

22 A After that we found when we started the search, we
23 found another, like a cell phone. It was like a tablet of
24 some sort, another hot spot or router. That's what I recall
25 and a lot of like cables and stuff like electronic cables.

1 Q Do you recall whether the cell phone found was a
2 smartphone?

3 A It was, yes.

4 Q When the term smartphone is used, what do you
5 understand that to mean?

6 A A cell phone with access to the internet.

7 Q During this intervention, did you feel or understand
8 that you had to take any measures?

9 A I did. At some point the client or Mr. Negron kept
10 coming close to Officer Lozada and at some point I even
11 opened my OC pouch because I understood that things were
12 escalating, you know.

13 Q They were escalating from the part of whom?

14 A Of the client. He kept raising his voice --

15 MR. LERMAN: Objection, Your Honor. That question
16 calls for speculation there and it calls for an opinion.

17 MS. HERNANDEZ: It calls for her observations
18 relating to what she is observing and viewing.

19 THE MAGISTRATE: Well, let's focus on what you
20 observed and what you were doing and what the -- but could
21 you -- I heard you say something that you opened a pouch.
22 What pouch you opened?

23 THE WITNESS: Oh, the OC pouch, that's where we
24 keep our pepper spray.

25 BY MS. HERNANDEZ:

1 Q Why did you feel the need to do this?

2 A He kept closing in on Officer Lozada, raising his voice
3 and he, like his attitude was, I was observing, it was very
4 confrontational and at that point I believed like something
5 could escalate even more, like he could maybe attack my
6 partner or something like that. So I opened by OC pouch.

7 MR. LERMAN: Objection, Your Honor, speculation and
8 relevance to the charges here as written.

9 MS. HERNANDEZ: Your Honor, --

10 THE MAGISTRATE: Overruled, overruled. You may
11 proceed.

12 BY MS. HERNANDEZ:

13 Q When you say he, who are you referring to?

14 A Mr. Negron.

15 MS. HERNANDEZ: No further questions.

16 THE MAGISTRATE: Who would like to conduct cross
17 examination of this witness? All right, AFD Lerman, your
18 witness for cross examination.

19 MR. LERMAN: May I request, just before we begin,
20 if there's any Jencks for this witness.

21 MS. HERNANDEZ: No.

22 MR. LERMAN: May I have just a moment, Judge?

23 THE MAGISTRATE: Sure.

24 CROSS EXAMINATION

25 BY MR. LERMAN:

1 Q Good afternoon, Officer.

2 A Good afternoon.

3 Q The home visit that you were just describing, that was
4 November 15th, right?

5 A Correct.

6 Q That was the only home visit you did at Guarabi that
7 day or did you visit some other people?

8 A We visited other people after that.

9 Q Okay.

10 THE MAGISTRATE: I'm sorry, because of the noise,
11 the background noise in the system, I couldn't hear the
12 answer. Could you repeat your answer.

13 THE WITNESS: Yes, I said, we visited other people
14 after that.

15 THE MAGISTRATE: Okay, you may proceed. I'm sorry
16 for the interruption. Go ahead.

17 BY MR. LERMAN:

18 Q So you know anytime that you visit someone that's part
19 of supervision, so you need to make a record of the work
20 that you've done?

21 A Not necessarily. We make a record of it if we are the
22 primary officer, not if we are the secondary officer.

23 Q I understand. So, when you finish the site visit at
24 Guarabi and you return to your regular work station, you
25 didn't write anything down based on your observations?

1 A No because as I said, I was a secondary officer in that
2 instance.

3 Q Were you involved before November 15th on any
4 supervision of Mr. Negron?

5 A No.

6 Q When Mr. Lozada was speaking with Mr. Negron after he
7 opened the door, did you go inside of the room that Mr.
8 Negron was living in?

9 A Not exactly as the room is very, very small. So if
10 we're in just at the door, we're practically in, so I just
11 stayed right at the door but it's quite a small space.

12 Q So when you were describing what was found and what was
13 recovered by Officer Lozada, that was -- you were describing
14 what Officer Lozada found inside the room.

15 A What I saw also. I was just there beside Mr. Lozada.

16 Q When, what you saw Officer Lozada find inside the room

17 A Yes and why also, I also saw the if you're referring,
18 I'm not sure if you're referring to the T.V., to the Xbox,
19 to the hot spot and then what was later found in the hamper
20 basically.

21 Q Would any of the items that you described as found, did
22 you ever go inside the room and recover those items
23 yourself?

24 A I didn't touch the items myself but I saw them directly
25 since if I'm standing right in the door, I can literally see

1 absolutely everything. It's a very, very limited space.

2 Q Okay. Just to clarify. So I've heard you describe
3 what you were seeing from outside the room, so you never
4 walked through the doorway inside, to go inside the room,
5 right?

6 A Not into the room. I just wanted to clarify because
7 you could be misleading saying not going into the room but
8 stepping right the door is basically being in the room. I
9 just want to clarify that.

10 Q Okay, so if I'm -- let's say at the end of the podium
11 here is the entrance to the room and I would have to step
12 forward through the doorway. Did you ever step with your
13 feet through the doorway into the room?

14 A I would say, yes, at the beginning, like a step closer
15 in the room, yeah.

16 Q So how many steps into the room did you go?

17 A Probably just --

18 MS. HERNANDEZ: Objection, Your Honor. This has
19 been asked and answered.

20 THE MAGISTRATE: Overruled. I'll allow the
21 question to proceed. Go ahead.

22 THE WITNESS: I could say approximately like a
23 step, no more than two steps into the room. Something like
24 that.

25 BY MR. LERMAN:

1 Q Did you have to, after you left the home visit on
2 November 15th, did you process any of the items? Were you
3 involved with any supervision after November 15th?

4 A I didn't.

5 Q So, after November 15th until today, have you discussed
6 this case with anybody?

7 A Discuss the case, no.

8 Q Have you had an opportunity to read --

9 A Well, let me clarify. I did tell my supervisor that I
10 was going to be here today but not discuss the case.

11 Q Okay, so you haven't had the opportunity to read any
12 of the documents that have been filed in this case?

13 A Yes, I have, yeah.

14 Q So you read those this morning before you came to
15 testify?

16 A I read some of the documents last week when was
17 supposed to be the first hearing.

18 Q So you read some of the documents and you're referring
19 to what documents did you look at before you came here?

20 A I looked at the docket.

21 Q You opened anything from the docket?

22 A I did. I cannot remember a specific motion but I did
23 review motions. I was just trying to see like the hearing
24 date and what not.

25 Q Did anyone ask you to read a draft of the motion to

1 revoke supervision before it was filed?

2 A No.

3 MR. LERMAN: Your Honor, may I have thirty seconds
4 before I continue?

5 THE MAGISTRATE: Well, of course, of course.

6 BY MR. LERMAN:

7 Q Officer Guzman, you mentioned that you opened a strap
8 on your OC pouch.

9 A The pouch, yeah.

10 Q So that's the step you take before using force, right?

11 A Yes.

12 Q Does your office policy require making a report to
13 anyone since you made that step?

14 A No, not by opening the pouch, no.

15 Q Did you make a report regarding that?

16 A No.

17 Q Okay, so at no point did you ever write anything down
18 related to this or speak to anyone about what your
19 observations were before today?

20 A To my supervisor, I did say to my supervisor that I was
21 going to be coming in here today.

22 Q Okay. Is your supervisor in court today?

23 A No.

24 MR. LERMAN: No further questions, Your Honor.

25 THE MAGISTRATE: You're excused.

1 THE WITNESS: Thank you.

2 THE MAGISTRATE: Does the government have any
3 additional witnesses?

4 MS. HERNANDEZ: No, Your Honor. The case is
5 submitted on behalf of the United States.

6 THE MAGISTRATE: Very well. Will the defense want
7 to call any witnesses?

8 (Witness excused)

9 MR. LERMAN: Your Honor, may we have thirty
10 seconds?

11 THE MAGISTRATE: Of course.

12 MR. LERMAN: Your Honor, may we take a brief recess
13 so that Mr. Negrón can use the restroom?

14 THE MAGISTRATE: Excuse me, a recess for what you
15 said?

16 MR. NISKAR: So that Mr. Negrón can use the
17 restroom.

18 THE MAGISTRATE: Well, if he needs to use the
19 restroom, well he can use the restroom but before he goes
20 out, do you intend to call any witnesses?

21 MR. NISKAR: Your Honor, we may have one. We're
22 still processing. This has been a long hearing and there
23 was a lot --

24 THE MAGISTRATE: Okay, well if, let's to this. If
25 you plan to call that witness, while Mr. Negrón is going to

1 the restroom, ask that witness to be walking on his or her
2 way over here. Okay, so that we don't have any delays. All
3 right.

4 MR. NISKAR: I understand, Your Honor.

5 THE MAGISTRATE: Marshals, you may -- I believe
6 that I've been told that the defendant needs a restroom
7 break. I will wait right here. So, in the meantime, if you
8 decide to use a witness, you can ask him or her to start
9 coming to the courthouse, excuse me to the courtroom.

10 All right, so now that the defendant has returned, is
11 the defense going to call any witness to the stand?

12 MR. NISKAR: Yes, Your Honor. Mr. Negrón Cruz
13 would like to testify and we're going to call Alexis Negrón
14 Cruz to the witness stand.

15 THE MAGISTRATE: Very well. Before he takes the
16 stand have you duly advised him of the fact that he's not
17 required to testify, that he has a right to remain silent.

18 (Inaudible)

19 THE MAGISTRATE: Yes, sure. Have you duly advised
20 Mr. Negrón that he has a right to remain silent; that he's
21 not forced or required to take the stand at today's hearing
22 and that anything that he testifies here today, the
23 government can use against him for purposes of these
24 revocation proceedings?

25 MR. NISKAR: I've explained to him that and I'll

1 also explain to him now that not only will he would have to
2 answer my questions but he would be subject to having to
3 answer the questions of the government and possibly the
4 Court as well, if the Court or the government has questions
5 after we conclude and after doing so, I will ask my client
6 again whether or not "it's your choice and your choice alone
7 to testify in this proceeding today."

8 THE MAGISTRATE: Okay. Well, so you have also
9 advised him about the fact that he's going to be subject to
10 cross examination. Okay, is it your understanding that your
11 client's decision to testify is a decision that he's making
12 voluntarily?

13 MR. NISKAR: Yes, Your Honor.

14 THE MAGISTRATE: Okay. Very well. Well, then
15 under these circumstances, Mr. Negron. Please.

16 MR. NISKAR: Can we ask, Your Honor, that he be
17 unshackled first.

18 THE MAGISTRATE: Well, let's at least one of the
19 two hands because we're going to have to take his oath, so
20 at least one of the two hands. So his right hand, so that
21 he can take his oath.

22 AFPD Niskar, if you want for clarity of the record to
23 ask any preliminary questions to your client as to his
24 decision to voluntarily testify, you're free to do so, if
25 you so wish, if you so wish. I mean it's just, I just want

1 to make sure that and I think I'm satisfied with your
2 answers that you have conferred to him and you have
3 explained to him his rights and that he voluntarily wishes
4 to testify, but nonetheless, if you wish to ask any of those
5 questions as part of the preliminary questions, you're free
6 to do so if you so wish. Let's place the witness under
7 oath.

8 (The defendant was duly sworn)

9 Whereupon,

10 ALEXIS D. NEGRON-CRUZ

11 was called as a witness and after having been first duly
12 sworn through the interpreter, was examined and through the
13 interpreter testified as follows:

14 THE MAGISTRATE: Have a seat. If the witness, we
15 have the microphone close towards him, that will be great.
16 AAFP Niskar, your witness for direct examination.

17 MR. NISKAR: Is there a way that I could ask the
18 witness to switch chairs, so that I could see my client
19 while he's testifying.

20 THE MAGISTRATE: That's fine. I personally don't
21 have any problem with that. I mean, is this an issue for
22 the interpreter? Does it create an issue?

23 THE INTERPRETER: The interpreter is (Inaudible)
24 The interpreter will make the effort.

25 MR. NISKAR: I'm sorry. Thank you.

1 THE MAGISTRATE: Again I don't have any particular
2 preference one way or the other. It's fine. If that helps
3 you to see your client better, that's fine. Okay. Very
4 well and thank you to the interpreter for accommodating that
5 request. Okay, you may proceed.

6 DIRECT EXAMINATION

7 BY MR. NISKAR:

8 Q Buenas tardes. Good afternoon.

9 A Good afternoon.

10 Q Would you please state your name for the record.

11 A Alexis Negron Cruz.

12 Q Are you currently under supervision and being
13 supervised by the Probation Department here in this court?

14 A I'm under supervised release.

15 Q Okay and when did that start?

16 A The first time or now?

17 Q The most recent.

18 A On November 9th.

19 Q In November 9th where were you living?

20 A I left MDC Guaynabo and I was transported to Guarabi.

21 Q Why were you transported to Guarabi?

22 A It was the Probation Office that decided for me to be
23 at Guarabi.

24 Q To do what there?

25 A I don't have housing and since I do not have housing,

1 to house me there temporarily.

2 Q Were you unemployed? I mean, were you homeless?

3 A Yes, I'm homeless.

4 Q Were you unemployed when you were released from MDC
5 Guaynabo?

6 A In the prior revocation I lost my job, my house and
7 part of my properties and my vehicle, my car loan.

8 Q Okay. Did there come a time where you met your
9 Probation Officer that was going to be supervising you in
10 this case?

11 A Before or after the 15th?

12 Q On the 15th did you meet your Probation Officer?

13 A On the 15th was the first time that I saw the Probation
14 Officer.

15 Q Okay. Tell us and tell the Court what happened that
16 day.

17 A That day they knocked on the door and I was inside the
18 room.

19 Q What happened next?

20 A Two Probation Officers appeared together with Ms.
21 Migdalia.

22 Q Okay and what happened next?

23 A He asked one question as if to take a urine test and I
24 told him that I did not have that supervision as such. He
25 came with some objects to make a urine test and I said that

1 I did not have that supervision as such.

2 Q Okay, at this point where was Mr. Lozada standing while
3 you were talking to him?

4 A He was outside the door.

5 Q Was he with anyone else?

6 A He was with the Probation Officer who sat here before.

7 Q Okay and then what happened next?

8 A He started questioning me as if I had something in my
9 room like I had some sort of artifact in the room.

10 Q Okay and what happened next?

11 A I told him that I would not answer that question.

12 Q Okay, what happened next, if anything?

13 A He asked me if he could come into the room.

14 Q What did you say?

15 A I know that if I refused him entry I would be in
16 violation of the orders and I said, yes, that there was no
17 problem.

18 Q Okay and did he come in?

19 A Yes, he came in.

20 THE MAGISTRATE: I believe there was a portion of
21 the answer in Spanish that was not translated to the English
22 language.

23 MS. HERNANDEZ: That is correct, Your Honor.

24 THE MAGISTRATE: I say this very respectfully
25 because I hold in very high regard the esteemed work of all

1 the interpreters but I believe that -- I believe -- just a
2 second please. I believe that at some point the witness
3 answered that he understood that he could not say no to the
4 request to enter the room because otherwise he would be and
5 I don't remember the exact words but he would not be like or
6 in compliance or it would be in violation of some
7 conditions. I believe he said something like that.

8 THE INTERPRETER: Remember that he said, "I knew
9 that I could not refuse him entrance because I knew, I would
10 be in violation of the order."

11 THE MAGISTRATE: Okay, well then my mistake, my
12 mistake.

13 MS. HERNANDEZ: Your Honor, we're seeking
14 clarification because in Spanish the words were "en
15 violacion de mis condiciones".

16 THE INTERPRETER: El dijo, "en violacion de la
17 orden".

18 MR. NISKAR: He said, "violacion de mi supervision
19 no condiciones".

20 THE MAGISTRATE: Okay, so we have three different--
21 All right, fair enough, fair enough. I have just heard
22 three different versions in Spanish. So let's do this.
23 AAFP Niskar, would you mind just simply repeating the same
24 question because that way and again, the interpreter could
25 very well right. Maybe it was my mistake and I missed the

1 translation. So, if that's the case, I'm sorry for the
2 interruption but since now I've heard three different
3 versions in Spanish, could you repeat that, the question
4 that led to that answer. Go ahead.

5 BY MR. NISKAR:

6 Q I think the question was, did you allow Mr. Lozada to
7 enter the room?

8 A Yes, I allowed Mr. Lozada to enter my room because in
9 my conditions it stated that if I do not allow him to come
10 into my room, I would be violating my conditions.

11 Q Okay, so who entered, either, did both of the Probation
12 Officers enter?

13 A Only Mr. Lozada.

14 Q Before Mr. Lozada entered, did he tell you that he had
15 seen any contraband from the doorway of your room?

16 A No, at no point did he see any contraband from the
17 outside door.

18 Q Okay, so what happened after he entered your room?

19 A He started inspecting to see what I had like, he
20 started looking at everything. He started looking behind
21 the T.V. to see if he could find something.

22 Q Okay, you in fact told Mr. Lozada where he could find
23 the cellular phone, correct?

24 MS. HERNANDEZ: Objection, leading, Your Honor.

25 THE MAGISTRATE: Could you rephrase your question.

1 BY MR. NISKAR:

2 Q Did you tell Mr. Lozada that you had a cellular phone?

3 A Mr. Lozada does not have technical knowledge. He
4 started asking me about each object that I had there.

5 MR. HERNANDEZ: Objection, not responsive.

6 THE MAGISTRATE: Well, I'll take the answer for
7 what it's worth. You may proceed with your next question.

8 BY MR. NISKAR:

9 Q Did you tell him anything about a cellular phone?

10 A Mr. Lozada, I told him about the cell phone after I
11 told him that I had a hot spot. I'm sorry, he could not
12 identify the hot spot as such. I told him that it was a hot
13 spot.

14 Q Did you ever threaten Mr. Lozada?

15 A Never.

16 Q Were you ever aggressive with him?

17 A I'm not an aggressive person.

18 Q Did you ever intentionally approach Mr. Lozada at a
19 close distance to try and put fear in him?

20 A No, he was the one who approached me.

21 Q At some point after the 15th you were advised about an
22 appointment to install the surveillance equipment on your
23 phone, correct?

24 A On the very 15th, on the very day of the 15th, after the
25 revision, Mr. Lozada, the lady who was here, the Probation

1 Officer who was here before and Ms. Migdalia, we met at the
2 Chapel to talk about the conditions.

3 Q Okay, and was there a plan to install the electronic
4 monitoring system on your phone?

5 A I told Mr. Lozada that the monitoring system has always
6 caused me problems. It has always caused me problems in my
7 supervision and I told him to please solve that and he told
8 me to give him two days.

9 Q What happened next, if anything?

10 A They left. A week went by and he didn't call me or
11 communicate with me. I asked the person who was then my
12 attorney, Mr. Andrew McCutcheon, and I explained to him the
13 situation. I explained to him that I needed a phone and I
14 explained to him about the monitoring and that I needed
15 internet and he communicated with Mr. Lozada and then Mr.
16 Lozada communicated with me.

17 Q Okay. Why is it that you needed a telephone?

18 A Everybody needs a telephone.

19 Q Why did you need a telephone?

20 A When I came out of prison for the first time, I could
21 not see myself without a phone. The second time when I came
22 in, you couldn't talk to the phone. Then when I came out
23 everybody was talking to the phone and chatting on the phone
24 and to me it was something weird, why is everybody always
25 hooked on the phone.

1 Q So, why is it that you needed a phone? Was there some
2 purpose that you needed a phone?

3 A I need the telephone to communicate with my family, to
4 communicate with the people that I know. With the phone now
5 you know where to go, you know how to call people, people
6 write to you by a text message.

7 Q Would it have assisted you with employment
8 opportunities?

9 A In 2022 when Taisa Mojica and Jeffrey Semidey allowed
10 me to have a phone with internet and no monitoring, I found
11 a job in less than a month.

12 Q Was the software ever installed on your telephone?

13 A On 2022 the software was going to be installed in my
14 phone but it was decided to revoke me before the software
15 was installed. On the very 27th of March when I went to the
16 Probation Office with the attorney for the software to be
17 installed, on that same day they decided to revoke me
18 instead, instead of installing the software.

19 Q So, again, this last December of 2023 you were not
20 employed, correct?

21 A On November 9th when I came out, I was without a job and
22 I spent November and December of 2023 without a job.

23 Q Were you able to pay the cost of the electronic
24 monitoring program?

25 A The condition states that it's subject to what the

1 person can pay. I cannot pay the software right now. Up
2 until now I cannot pay for the software because I was
3 without a job.

4 Q Is it your feeling that you interfered in any way with
5 having this software system installed on your phone?

6 A At no point. I have always communicated to the Court
7 all the problems that I've had through motions to install
8 the software.

9 Q You were here during the testimony of Probation Officer
10 Lozada, right? You heard that testimony?

11 A Yes, I heard the translation that was provided to me of
12 the testimony.

13 Q He has testified that at two points there was an
14 individual by the name of Jose Rivera Torres -- well, he has
15 testified that an individual by the name of Jose Rivera
16 Torres was in your room at Guarabi. Did you hear that
17 testimony?

18 A In my room?

19 Q Yes.

20 A No, Jose has never come into my --

21 Q That you had left Guarabi, I'm sorry, my fault. That
22 you had left Guarabi with Mr. Rivera Torres and you were
23 associating with him at Guarabi. Did you hear that
24 testimony? Yes or no?

25 A Can I clarify something for the Court?

1 Q Not yet, just yes or no. Did you hear that testimony?

2 A Yes, I heard that testimony.

3 Q Was Mr. Rivera Torres someone that was associated with
4 your original case that you had a conviction for?

5 A If he has any kind of relation to me in that case?

6 Q Yes.

7 A No, no, never.

8 Q Apart from Guarabi, were you acquaintances or friends
9 with Mr. Rivera Torres?

10 A In 2022 when I found a job, my then boss hired me to
11 work at Liberty. He found an additional vehicle that he
12 left me in charge of so that I could hire an additional four
13 people.

14 I hired four people exclusively from Guarabi to collect
15 data for Liberty. One of these people was Jose Rivera. He
16 worked eight hours a day with me together with the work team
17 five days a week. His Probation Officer knew it.

18 We never had any problem like the one that's happening
19 now with any kind of relationship. On the contrary, they
20 were happy because he had a job.

21 Q When you left Guarabi with Mr. Rivera Torres, that was
22 with or without the permission of Guarabi?

23 A With the permission of Guarabi because you have to sign
24 a list for your exits and they bring you together with other
25 people in a bus and that was only once to go buy food at

1 Econo.

2 MR. NISKAR: I have no further questions but Ms.
3 Hernandez may have some questions for you.

4 THE MAGISTRATE: Your witness, Ms. Hernandez.

5 MS. HERNANDEZ: Yes, Your Honor, if I can have a
6 just a couple of minutes to review the documents.

7 THE MAGISTRATE: Yes, yes, you may.

8 MS. HERNANDEZ: Ready to proceed, Your Honor.

9 THE MAGISTRATE: Very well. Your witness for cross
10 examination.

11 CROSS EXAMINATION

12 BY MS. HERNANDEZ:

13 Q Mr. Negron, it is correct to stated that you are
14 familiar with your conditions of supervised release, is that
15 correct?

16 A Yes.

17 Q Your conviction for which you are on supervised release
18 is possession of child pornography material, correct?

19 A Yes.

20 Q As part of the offense of conviction, it involved the
21 use of a telephone and electronic devices.

22 A It involved a computer, not phone.

23 Q It involved an electronic device with access to the
24 internet.

25 A It involved a computer with access to the internet but

1 never a phone.

2 Q In your judgement of conviction since December 4,
3 2013, it included a condition that you would not have access
4 to the internet at your place of residence unless approved
5 by the Probation Officer.

6 A In my conditions, the ones that were modified before --

7 Q I'm asking exactly related to --

8 THE MAGISTRATE: Hold on, hold on, please allow him
9 to finish his answer. Please allow him to finish. You may
10 finish your answer.

11 THE WITNESS: Before I could not have a telephone
12 with access to the internet without asking the Probation
13 Officer. Those conditions were modified.

14 BY MS. HERNANDEZ:

15 Q I'm asking you precisely about your first judgement of
16 conviction. I will ask later about the modified conditions
17 after your revocations of supervised release.

18 MR. LERMAN: Objection, Your Honor. This is beyond
19 the scope of not only the direct but it's beyond the scope
20 of the charges. What's relevant here is the condition that
21 he had when he was released on November 9th and then the
22 throwing out gratuitously about, "your other revocations."
23 There's a revocation that's under appeal in the Circuit.

24 MS. HERNANDEZ: It goes to -- if I may respond,
25 Your Honor?

1 THE MAGISTRATE: I'll hear you.

2 MS. HERNANDEZ: Yes, it goes to his knowledge of
3 his conditions as to what his conditions he has had since
4 the onset until current relating to the modifications and
5 what transpired then on November of 2023 and it is important
6 to establish what the conditions are and what the conditions
7 have been and the requirements to comply because it all goes
8 to his knowledge and understanding whether he's complying or
9 not with the conditions.

10 MR. LERMAN: Your Honor, also I know that this may
11 be a practical issue but I don't think -

12 THE MAGISTRATE: Mr. Lerman.

13 MR. LERMAN: I'm sorry, my apologies.

14 THE MAGISTRATE: Okay, well then, all right, you
15 may proceed.

16 BY MS. HERNANDEZ:

17 Q We are again speaking about your original judgement.
18 Since the onset it also indicated that you should not
19 possess or use a computer, cellular telephone or any other
20 device with internet access and capability at any time or
21 place without prior approval from the United States
22 Probation Office.

23 MR. LERMAN: Objection, Your Honor. It's a
24 compound and very long question and it has to be interpreted
25 and I don't know if we're able to interpret --

1 MS. HERNANDEZ: I think my questions have been a
2 lot shorter than the ones that were made --

3 THE MAGISTRATE: Hold on, please, please. Let's
4 not start arguments of this nature. Let's just simply, if
5 the interpreter has an issue or a difficulty, sir, feel free
6 to let us know and then we'll try to see how we can address
7 that. All right.

8 THE INTERPRETER: Sure, Your Honor. If you could
9 just hand me the text that you just read and repeat the
10 question that will be great. I believe the original
11 question was, if he knew your original conditions on the
12 first judgement was --

13 MS. HERNANDEZ: Since the onset.

14 THE INTERPRETER: Since the onset were --

15 THE MAGISTRATE: Please repeat your question for
16 the sake of the record.

17 MS. HERNANDEZ: Yes.

18 BY MR. HERNANDEZ:

19 Q Since the onset in your original judgement of
20 conviction, it included the condition which was read from
21 condition number 6.

22 THE MAGISTRATE: Okay, okay. Once again, I'm going
23 to repeat what I have said several times already at this
24 hearing. Condition 6 of what docket number, of what page?

25 MS. HERNANDEZ: Your Honor, yes, and to be clear,

1 we were answering a question. We had the document with us.
2 We provided it to the translator, so we are receiving the
3 document back so we can once again pose the question as we
4 had for the record.

5 THE MAGISTRATE: Well pose the question then

6 MR. NISKAR: Your Honor, my only concern at this
7 point is the colloquy and the discussions between counsel
8 and the Court and the objections that are being made are not
9 being translated for Mr. Negrón Cruz by the court
10 interpreter. None of this has been translated.

11 THE MAGISTRATE: Well, I think that's fair. Thank
12 you for bringing that to my attention. Mr. Ravelo, he's
13 going to have to keep wearing the headset so that that way
14 because the defendant chose to remove the headset, so --

15 MR. NISKAR: Only on one ear. He can (Inaudible)
16 on one ear.

17 THE MAGISTRATE: So, that way when these situations
18 arise, that way Mr. Ravelo can provide translation. Thank
19 you for bringing that to my attention but now I see that the
20 defendant has chosen to at least put on one ear the headset.

21 So that way when these kind of objections arise, that
22 way he can also listen to the translation. Thank you, AFPD
23 Niskar for bringing that matter to my attention. So, once
24 again, AUSA Hernandez, just for clarity of the record, can
25 you simply ask the full question so that that way the

1 interpreter can translate that to the witness.

2 MS. HERNANDEZ: Yes, Your Honor.

3 BY MR. HERNANDEZ:

4 Q Since the onset in the original judgement of
5 conviction, it included a supervised release condition and I
6 am referring now for clarity of the record, the judgement is
7 at docket 143. We are reading from page 5 of the seven page
8 judgement, condition number 19, the first sentence. "He
9 shall not possess or use a computer, cellular telephone, or
10 any other device with internet accessing capability at any
11 time or place without prior approval from the Probation
12 Officer."

13 THE WITNESS: You took it off.

14 MS. HERNANDEZ: It was just to read that I had it
15 on the screen.

16 THE WITNESS: I was reading it. I'm reading it.

17 BY MS. HERNANDEZ:

18 Q If you may answer the question.

19 A It's just that I want to make sure because I had some
20 conditions that were changed afterwards and I want to make
21 sure that you have the correct paper, not the one that
22 changed afterwards.

23 Q Sir, I'm asking precisely and how the question
24 commenced relating to your original judgement of conviction
25 on December 4, 2013.

1 A Those conditions were changed.

2 Q I have not asked whether they have been changed. I
3 ask whether at that time that condition was imposed, at that
4 point in time in 2013?

5 A Yes, but it's 2024.

6 Q Correct, sir, and after that judgement of conviction,
7 you've had two following supervised release revocation
8 hearings, correct?

9 A That's correct and we've also had two changes in the
10 supervisions.

11 Q Your last judgement of conviction was on November 9,
12 2023.

13 A Yes.

14 Q Now, that judgement of conviction also had the
15 requirements relating on whether you could access or possess
16 cellular devices or other electronic devices, correct?

17 A I didn't quite understand that question.

18 Q Sir, did the supervise release conditions imposed on
19 your last judgement of conviction include also a condition
20 that indicated that you should not possess or use computer,
21 cellular telephone or any other device with internet access
22 and capability at any time or place other than with the
23 systems that will enable the Probation Officer or his or her
24 designee to monitor and filter any internet access?

25 A I understood that question, so that it doesn't need

1 translation and that was changed because it was changed to
2 say that he could not use the devices without internet
3 without the consent or approval of the Probation Officer.
4 That was changed.

5 MS. HERNANDEZ: At this time we would request that
6 the Court take judicial notice of docket 429, a judgement
7 and particularly in page 2 of the six page document where it
8 indicates special condition number 32.

9 THE MAGISTRATE: I'm sorry. I'm sorry, I don't
10 mean to interrupt you but there's a request that the
11 prosecutor is asking me to take judicial notice of, so
12 that's not really a question that's being made to you, Mr.
13 Negron. It's a request that the prosecutor is making to me
14 and the Court is asking me to take judicial notice of
15 special condition number 32 in docket 429 at page 2. Is
16 there any objection to this request, AFPD Lerman?

17 MR. LERMAN: Your Honor, we -- I think I understand
18 why Mr. Negron was answering because we don't see how this
19 relates to the cross examination. If the government at some
20 point wants to ask the Court to look at a particular
21 document, the government's been cross examining on some
22 different documents and, so, if we're through with cross
23 examination and the government has other evidence, so we
24 just object for relevance at the moment.

25 THE MAGISTRATE: Well, the objection is overruled.

1 I do take judicial notice that in docket 429, on page 2, at
2 special condition number 32, it states, "he does not possess
3 or use a computer, cellular telephone or any other device
4 with internet accessing and capability at any time or place
5 other than those with systems that will enable the Probation
6 Officer or his or her designee to monitor and filter any
7 internet accessing. You may proceed with your examination.

8 MR. LERMAN: Your Honor, I'm sorry, my apologies
9 and just that the Court is taking notice of that document,
10 we would just -- we wouldn't object to the taking notice
11 that that was one of the violations that Judge Besosa found
12 on the November 9th, date, so that's not --

13 THE MAGISTRATE: I have not taken judicial notice
14 of that. I have simply taken judicial notice of the fact
15 that special condition number 3, to which I read verbatim,
16 word by word, is contained in the judgement of revocation on
17 docket 429 on page 2, that's it. That's all I've taken
18 judicial notice of. I've never said that whether that was a
19 violation that the Court found or did not find.

20 I'm not taking judicial notice of that. I'm just
21 simply taking judicial notice of the fact that there is a
22 special condition number 32 in docket 429 in that judgement
23 of revocation. That's all.

24 MR. NISKAR: But that's not what 429 stands for.
25 429 just states that Judge Besosa found that special

1 condition 32 had been violated previously, not that he's
2 still under the obligation to complete that special
3 condition.

4 THE MAGISTRATE: Okay, once again, you see, you're
5 jumping one step ahead. You see, I have not taken judicial
6 notice of that which you have just stated. All I have taken
7 judicial notice of is the mere fact that special condition
8 number 32, as I read it word by word, appear and it's
9 contained and it's part of the judgement of revocation on
10 page 2 in docket 429. That's it.

11 MR. NISKAR: But what is the purpose of the
12 government asking the Court to take judicial notice?

13 THE MAGISTRATE: Well, --

14 MR. NISKAR: That's not relevant.

15 MS. HERNANDEZ: If we may respond because I think
16 it was defense counsel themselves who indicated that the
17 supervised release in document 429 also includes that all
18 the special conditions of supervision to continue under the
19 same conditions previously imposed on him which would
20 include special condition number 32.

21 THE MAGISTRATE: Okay, in any event, again, I can
22 take judicial notice of the contents of a judgement of
23 revocation in terms of what the document says and in this
24 particular case I have literally read verbatim word by word
25 from page 2 of docket 429 special condition number 32 and

1 what are the implications of that, well, the parties may
2 disagree and well, I'll hear arguments from both sides, but
3 the fact that it's contained in the judgement of revocation
4 as special condition number 32 in docket 429, I do take
5 judicial notice of that. You may proceed with your next
6 question.

7 BY MS. HERNANDEZ:

8 Q Yes and the question was that that was one of the
9 conditions that was imposed.

10 A I tell this Court that the condition that I have as
11 far as I know is the changes, is that Mr. Negrón can have
12 any system or telephone as long as it has a monitoring
13 system that he can pay for. To date, the Probation Office
14 has not been able to solve it.

15 Q So, you need a monitoring system for any device that is
16 going to be under your possession?

17 A As long as the Probation Officer can solve that
18 problem, it is my understanding that I can. So far the
19 Probation Office has not been able to solve that problem
20 and because of that I have been left without a phone.

21 If they cannot provide or they cannot solve this
22 problem, I will be left without a phone for the rest of my
23 life.

24 Q On November 15, 2023 you had a smartphone.

25 A I had a smartphone for emergencies. I did not have a

1 smartphone for my personal use. It was a smartphone
2 for emergencies.

3 Q So you had a smartphone?

4 A That day I had a smartphone for emergencies.

5 Q We are in agreement that at that moment in time you
6 were residing in Guarabi.

7 A Yes.

8 Q In a square room.

9 A Yes.

10 Q And it was a small room?

11 A Yes.

12 Q The closet did not have any doors.

13 A Forgive me for -- I mean, the closet did not have doors
14 but I don't understand why the closet had to have any doors.

15 Q In that room you had a Smart T.V.

16 A I've always had a Smart T.V.

17 Q You also had an Xbox.

18 A Since 2022 the Probation Office has known that I have
19 an Xbox, that I have a Smart T.V. That I have all of those
20 things.

21 Q On November 15, 2023, sir, I'm specifically asking you
22 for that date, you a Smart T.V. and you had an Xbox. Is
23 that correct?

24 A Yes.

25 Q You also had an internet hot spot.

1 A On 2022 I also had a hot spot.

2 Q See, sir, I'm asking you for November 2023.

3 A I've always had a hot spot and there's never been a
4 problem with the hot spot.

5 Q So the response is, yes.

6 A Yes.

7 Q Prior to that date, November 15, 2023, you had not had
8 other interactions with Negron.

9 A I am Mr. Negron.

10 Q Yes, Negron, sorry. I'm saying with Probation Officer
11 Jose Lozada.

12 A Before December 15th he was not my Probation Officer.

13 Q Are you meaning to say before November 15 of 2023.

14 A Yes.

15 Q On that date you also, as you just admitted, had a
16 smartphone?

17 A Yes.

18 Q That smartphone was capable of having access to the
19 internet.

20 A That emergency telephone does have capability to
21 access the internet.

22 Q That smartphone did not have a monitoring device.

23 A That same smartphone in which it was attempted to
24 install the monitoring system is not compatible with the
25 monitoring system.

1 Q So then the response is, yes, it did not have a
2 monitoring device.

3 A Because it could not be installed.

4 Q Sir, I'm going to ask you one more time, yes or no,
5 did that particular phone have a monitoring device at that
6 point in time of November 15, 2023, yes or no?

7 A It did not have a monitoring system. It could not be
8 installed.

9 Q On that date you also provided the password to the
10 Probation Officer Lozada for that particular phone.

11 A I always provide the password because if I refuse, that
12 would be a violation.

13 Q Now, sir, I just want to make sure, looking at what
14 has been identified as Government's Exhibit number 2, that
15 is the hot spot that you had in your room in Guarabi,
16 correct?

17 A That is a hot spot that Mr. Lozada was not able to
18 identify.

19 Q But you were able to identify it.

20 A Yes, I identified it and I told him that I had a hot
21 spot.

22 Q What's a hot spot?

23 A That hot spot is a system, that hot spot is provided
24 by the company, Claro, with the Obama phones. It's not that
25 phones are owned by the President, President Obama, it's

1 that they're called Obama phones. They're free phones and
2 the company, Claro, provides a free phone and a free hot
3 spot.

4 Q That is to have access to the internet.?

5 A That's specifically to provide access to the game
6 console for video games and to the T.V. set to watch movies.

7 Q What we see in Government's Exhibit number 3 is your
8 Xbox, correct?

9 A Wrong.

10 Q What is it that we see there, sir?

11 A A UPS, that's a battery.

12 Q This question here relates to the controls of the
13 Xbox, correct?

14 A Yes, that's to charge the Xbox controls?

15 Q That's the Xbox that you also had in your room.

16 A Which one?

17 Q Well, the one that you have indicated that you also
18 had an Xbox in your room.

19 A No, that was a battery. You didn't show me an Xbox.

20 Q Sir, I ask you, but you also had an Xbox in your room.

21 A With all due respect, Madam Prosecutor, you showed me
22 an image and I told you as an image and there was no Xbox in
23 the image.

24 Q At this time I'm not showing you an image and I
25 inquired right before, you also had an Xbox in your room,

1 correct?

2 A If I could clarify some details to the Court.

3 Q If you could please answer my question, yes or no?

4 A Can you please repeat the question.

5 Q You had an Xbox in your room.

6 A I have a video game console, an Xbox because the
7 Probation Office does not have a system that could monitor
8 it or monitor it just the same the T.V. and since they don't
9 have a monitoring system that can monitor it, they cannot
10 take it away from me.

11 That's why I've always had a T.V. set and a video game
12 console because if the software it does not provide support,
13 if it cannot support the monitoring, they cannot take away
14 or leave me without a T.V. set or a video game console.

15 Q Sir, I'm going to follow my next question because at
16 this stage I'm asking relating to the items that you had.
17 In Government's Exhibit number 6, is that the smartphone
18 that you have identified as the smartphone that you have?

19 A That's the phone in which the monitoring system cannot
20 be installed.

21 Q That's the telephone that you had on November 15, 2023
22 in the room.

23 A That is the phone that I had in the room on November
24 15, 2023 and that is the phone that Mr. Lozada brought to me
25 on December 5th in order to install the monitoring system on

1 December 7.

2 Q During the month of December, there was no monitoring
3 system that was provided, any smartphone provided to you,
4 correct?

5 THE INTERPRETER: I'm sorry, there was no
6 monitoring system --

7 BY MS. HERNANDEZ:

8 Q In December 2023 you were not provided with any
9 smartphone or phone that had a monitoring device.

10 MR. LERMAN: Objection. That question is compound.

11 THE MAGISTRATE: I believe, wasn't the question
12 that -- I believe your question is, AUSA Hernandez that
13 whether on the 5th of December --

14 MS. HERNANDEZ: In December 2023 --

15 THE MAGISTRATE: Whether he had been provided with
16 a smartphone.

17 MR. HERNANDEZ: Yes, that had a monitoring device.

18 THE MAGISTRATE: Okay, I don't think that's a
19 compound question. It's basically -- all right, you may,
20 does the interpreter need to have the question repeated?

21 THE WITNESS: December, what day of December?

22 BY MS. HERNANDEZ:

23 Q Any day during December.

24 A On December 7th there was an attempt to install the
25 monitoring system in that phone, in that same phone, and it

1 was not compatible.

2 Q After that date you were not provided with a cell
3 phone that had any monitoring device.?

4 A Whether the Probation Officer provided me with a phone
5 with monitoring, no.

6 Q Now, sir, calling your attention now to January 3rd,
7 2024, on that date Probation Office also visited your room
8 at Guarabi, correct?

9 A Yes.

10 Q At that time you were also found to have a smartphone
11 in the room, correct?

12 A Can you please pose the question again.

13 Q On January 3, 2024, during the visit by the Probation
14 Office, you were also found to have a smartphone on that day
15 in the room.

16 A That day I told the Probation Officer --

17 THE MAGISTRATE: Let me have at least the
18 translation. Can you go ahead. What's the translation?

19 THE WITNESS: That day I told the Probation
20 Officer.

21 BY MS. HERNANDEZ:

22 Q At that time we're asking to first respond to the
23 question yes or no.

24 A I'm going there.

25 Q Yes or no?

1 A I'm sorry. That day --

2 MS. HERNANDEZ: Your Honor, if we may instruct the
3 witness to answer the question.

4 THE MAGISTRATE: He's trying to. Let's allow him.
5 Let's allow him to answer.

6 THE WITNESS: On that day I told the Probation
7 Officer that one of the phones was mine.

8 THE MAGISTRATE: Go ahead. Continue answering the
9 question.

10 THE WITNESS: Yes.

11 BY MS. HERNANDEZ:

12 Q Sir, and during the period of November 15 through
13 January 8, just to be clear, November 15, 2023, through
14 January 3, 2024, you were not employed.

15 A Correct. I was not able to find a job.

16 MS. HERNANDEZ: One moment, Your Honor.

17 BY MS. HERNANDEZ:

18 Q Sir, so any contacts that you had with Jose Rivera
19 Torres at that time was not related to any employment.

20 A At that time my relationship with Jose Rivera Torres
21 had been like before when we didn't have an employment in
22 2022.

23 Q So specifically from November 15, 2023 through January
24 of 2024, your contact with this individual was not related
25 to any employment, correct?

1 A I gave him an employment on November 9th but it was an
2 employment that, I mean if I could explain this a little bit
3 to the Court briefly so that they could understand it. In
4 Guarabi you sign up to perform some tasks. If you do not
5 want to perform the tasks you have to delegate them, you
6 delegate them.

7 At the time you delegate a task, it's five dollars that
8 you have to pay for the task. I told Jose that if he wanted
9 to perform my tasks, I would pay him. He accepted the tasks
10 and I would pay him. It's an employment.

11 Q So your association with him was that you employed him
12 to do your tasks at Guarabi.

13 A Yes, I can employ any person but I trust him because
14 he's a good worker.

15 Q What type of tasks do you ask him to do for you?

16 A No, no, no. These are tasks that Guarabi assigns.
17 Guarabi assigns those tasks to everybody. You have to
18 perform an obligatory task. If you cannot or if you do not
19 want to perform the task, you delegate it and I talked to
20 him and I asked him if he wanted to perform the tasks and if
21 he wanted to perform the task, I would pay him five dollars
22 with the Food Stamp card and that's why we went to Econo to
23 buy food.

24 Q So, as part of that relationship that you established
25 with him, you also went outside of Guarabi to a supermarket

1 to purchase food with him.

2 A It was only once because I was able to pay him only
3 once because I pay him monthly.

4 Q Sir, and during your stay at Guarabi, isn't it correct
5 that you together with the case manager have had to confer
6 because you are breaking the rules and have not been
7 attending group meetings.

8 MR. LERMAN: Objection, Your Honor, relevance to
9 any charge here and it assumes facts that haven't been
10 presented and it's beyond the scope of direct and really
11 anything that's come out in the case so far.

12 MR. NISKAR: Improper impeachment as well.

13 THE MAGISTRATE: Just give me a second, please.
14 Can you repeat your question once again, AUSA Hernandez.

15 MS. HERNANDEZ: Yes, the question was if during his
16 stay in Guarabi, he had been told by the case manager and he
17 had had conflicts relating to breaking the rules and not
18 participating in group meetings.

19 THE MAGISTRATE: Well, I don't believe that subject
20 matter was covered on direct examination. So, beyond the
21 scope of direct. Next question.

22 MS. HERNANDEZ: Your Honor, if we may respond
23 briefly, they did cover his compliance at Guarabi and him
24 leaving or not without authorization or with his conditions
25 and it also goes to his attitude towards supervision which

1 is part of also the supervising process and not following
2 instructions, not complying and he was also asked relating
3 to his general compliance in relation to that.

4 MR. LERMAN: Your Honor, we would object to those
5 as grounds and one, because it's -- we don't think it's
6 factually accurate and two, we object and contest the claim,
7 the generic claim about attitude related to at least as it's
8 described by the government.

9 There's six different allegations here and none of them
10 cover what the government just described and none of them
11 cover the rules of the housing placement and the Court has
12 already seen some major issues with some verbal testimony
13 about somebody hearing, from somebody hearing, from somebody
14 about what the rules might have been over there.

15 MS. HERNANDEZ: Your Honor, in response to that,
16 the Court has not heard testimony about somebody hearing
17 about somebody hearing, about somebody hearing, but
18 what it has heard is the testimony of the Probation Officer
19 who directly supervised and had conversations with the case
20 manager in the center, who was also present during some of
21 the interactions and who has provided monthly treatment
22 reports and all of that has come in as part of the record in
23 this case and defense counsel has had access to that even
24 before this hearing.

25 THE MAGISTRATE: I still maintain my original

1 ruling that I believe that -- you're ready to listen to what
2 I have to say?

3 MS. HERNANDEZ: Yes, Your Honor. We're listening.

4 THE MAGISTRATE: Okay, well, I have already ruled
5 that it's beyond the scope of the direct. There was a
6 question on direct examination specifically as to whether
7 there was a meeting on November 15th, on November 15th,
8 between Mr. Negrón, the Probation Officer and somebody else
9 from Guarabí.

10 If you want to ask about that meeting, go ahead. If
11 not, the objection is sustained as beyond the scope.

12 MS. HERNANDEZ: We will move to another inquiry,
13 Your Honor.

14 THE MAGISTRATE: All right. You can move to
15 another inquiry then.

16 MS. HERNANDEZ: Yes.

17 BY MR. HERNANDEZ:

18 Q Particularly where you also reprimanding for leaving
19 the center without notifying the staff in charge.

20 MR. LERMAN: Same objection to that that we just
21 made for the other line of questions, Your Honor.

22 MS. HERNANDEZ: Your Honor, this particularly
23 relates to the part about his association, about his
24 compliance and that which has been reported and which he
25 also asked about.

1 THE MAGISTRATE: Well, but leaving without
2 permission is one thing. Associating with somebody is
3 another thing. So, I mean, I don't see how a question about
4 leaving without permission has something to do with
5 association.

6 MS. HERNANDEZ: It has to do, Your Honor, in the
7 manner in which he is leaving the center with or without
8 permission and also associating himself with another person
9 outside of the center.

10 THE MAGISTRATE: Well, those are two different
11 questions. You may ask the latter.

12 BY MS. HERNANDEZ:

13 Q Sir, were you also leaving the center without
14 permission and in one occasion with Jose Rivera Torres?

15 A At no point did I leave Guarabi without permission and
16 even less with Jose Rivera Torres because Jose Rivera
17 Torres, he always takes the bus because he doesn't like to
18 walk and I leave walking, on foot.

19 Q Sir, in your testimony here today you did indicate that
20 you did leave the center with this person, correct?

21 A The exit was signed. We got on the bus with the rest.
22 We went to Econo and after that we came back.

23 Q For how long have you known this person?

24 A I've known him since 2022 when I hired him to work at
25 Liberty and his Probation Officers knew everything about it.

1 I believe her name was Elsie or Daisy. I don't remember
2 exactly what her name was.

3 Q Sir, and as part of your conditions you need to
4 register as a sex offender, correct?

5 A Yes.

6 Q This individual does also, correct?

7 A I don't know what his case is. I never asked him.

8 MS. HERNANDEZ: No further questions.

9 MR. NISKAR: No redirect.

10 THE MAGISTRATE: You're excused. Although, of
11 course, you're entitled to remain in the courtroom because
12 you are the defendant. So, you're excused from the witness
13 box but you are certainly entitled and welcome to remain in
14 the courtroom.

15 (Witness excused)

16 MS. HERNANDEZ: Your Honor, we would ask that the
17 Probation Officer, he should be coming into the courtroom at
18 this stage also.

19 THE MAGISTRATE: Well, let's first give a chance
20 for the defendant to walk to defense counsel table. One
21 step at a time. Okay, are there any additional witnesses
22 that the defense wants to call?

23 MR. LERMAN: No, Your Honor, we don't have any
24 additional witnesses.

25 THE MAGISTRATE: Okay, so then now that the

1 government and the defense have concluded with their
2 presentation of the evidence and for the limited purpose of
3 the preliminary revocation hearing, they have rested. Let's
4 make sure that all the exhibits are with the Courtroom
5 Deputy Clerk.

6 So, let's take a fifteen minute recess and in fifteen
7 minutes I will be back. If the attorneys would like to make
8 any arguments, I'll hear you. Then I'll make a decision on
9 this matter.

10 MR. NISKAR: We were thinking of asking the Court
11 to allow a brief opportunity to brief the violations.

12 THE MAGISTRATE: I think that I would prefer to
13 hear you orally here when we're done. So, when we reconvene
14 in fifteen minutes. So, I will give both sides an
15 opportunity to be heard. If you want to argue as to the
16 particular violations as to why the Court should or should
17 not make a finding of probable cause, both sides will be
18 given an opportunity to be heard. Okay. So, the Court is in
19 recess for fifteen minutes.

20 (A recess was taken at 4:24 p.m.)

21 (Court back in session at 4:53 p.m.)

22 THE MAGISTRATE: I said that I was going to give
23 you an opportunity to be heard as to any arguments. AUSA
24 Hernandez, any arguments that the government wishes to bring
25 to my attention before I make a decision?

1 MS. HERNANDEZ: Your Honor, all that we would like
2 to clarify is that at this stage of the proceedings what we
3 are requesting is that the Court find that there is probable
4 cause relating to the violations that have been reported via
5 the motion notifying violations of supervised release and
6 for which we have presented evidence during this hearing.

7 That probable cause determination would encompass the
8 violations from the conditions of supervised release that
9 were imposed in the last judgement of conviction which was
10 November 9, 2023 which is document 429.

11 Pursuant to that judgement, it contains mandatory
12 conditions. It contains standard conditions and also
13 contains special conditions. The special conditions, it
14 indicates that it needs to continue to follow the special
15 conditions previously imposed on the defendant.

16 The last judgement of conviction prior to the one
17 thousand docket 429, is the one that was imposed on February
18 7, 2022, which is docket 323.

19 In addition to that, Your Honor, then the violations
20 that are being reported include the following standard
21 conditions which we understand there has been evidence to
22 sustain.

23 Standard condition number 4 that the defendant must
24 answer truthfully the conditions asked by the Probation
25 Officer and there was testimony in relation to the response

1 of not being truthful as the time of the first intervention
2 on December 15, 2023 that then escalates and leads then to
3 the inspection which then lead to finding eventually the hot
4 spots, the smart T.V. and then the smartphone that was found
5 in the residence at that time.

6 THE MAGISTRATE: Which exactly was the statement
7 that was false?

8 MS. HERNANDEZ: The statement relating to him at
9 that moment in time for when first entered the room not
10 indicating that he had no devices.

11 THE MAGISTRATE: No, you mean no electronic
12 devices?

13 MS. HERNANDEZ: No electronic devices, yes, Your
14 Honor, and upon further inspection --

15 THE MAGISTRATE: Who testified as to that?

16 MS. HERNANDEZ: Officer Lozada. There was
17 testimony and it is also included in the motion that was
18 submitted with the allegations. As to the standard
19 condition also during the motion it's mentioned and number
20 3, it would be number 7, which relates that the defendant
21 must work full time at least 30 hours per week in a lawful
22 type of employment unless the Probation Officer excuses you
23 from doing so. If you do not have full time employment, you
24 must try to find a full time employment unless the Probation
25 Officer excuses you from doing so and there was testimony

1 that during that span of time of November 15 to January 3,
2 the probationer was not employed and according to the
3 testimony, was not looking for options to be employed
4 because he understood that the only way to find a job was
5 having a smartphone or having access to the internet.

6 So, during that period, he was not complying with this
7 condition or either having full time employment or looking
8 and making the due diligence to get full time employment.
9 In fact, according to his testimony, he was not even
10 performing the tasks that he was supposed to be doing at
11 Guarabi because he was paying a third party to comply with
12 those tasks and paying him through the money that he was
13 receiving from Food Stamps.

14 As to standard condition number 13, "you must follow
15 the instructions of the Probation Officer related to the
16 conditions of supervision" and that covers all the
17 conditions that he is actually violating and his response
18 and his attitude as to the instructions that are being
19 provided, as to the conditions of supervised release that he
20 has to follow and as to not having the devices that he could
21 not have according to his own conditions.

22 In addition to that, there was reported in relation to
23 special condition number 24, that he shall not associate
24 with individuals who have previously traded illicit material,
25 a family member, a friend under the criminal justice system,

1 on vesting a third party setting and with prior approval of
2 the Probation Officer and to that respect the testimony that
3 was provided was his contact with Jose Rivera Torres, who is
4 also a sex offender and according to the testimony that we
5 heard from the Probation Officer, that is information that
6 had been obtained directly from the case manager, who also
7 supervises in the context of the Guarabi facility, who he is
8 associating himself with and also by the admissions of the
9 defendant himself to indicate that he did continue to
10 associate himself with that person and even entered into
11 what he considers to be an employer relationship with him.

12 Then there's special condition 31 and 32, which they
13 relate to each other because 32 is specifically that he
14 shall not possess or use a computer, cellular telephone, or
15 any other device with internet accessing capability at any
16 time or place other than those with systems that will enable
17 the Probation Officer or his or her designee to monitor and
18 filter any internet accessing and that goes together with
19 special condition number 31, that he shall consent to the
20 installation of such system.

21 In this case the testimony is clear that on two
22 occasions he was found with devices, electronic devices that
23 were smartphone, had access to the internet.

24 He had in the first occasion November 15, by his own
25 admission, a hot spot with access to the internet. He

1 was in possession of the smartphone that was password
2 protected and he was the one that had the password and it
3 was not monitored in any way, shape or form.

4 In addition to that, then on January 3, 2024, again he
5 is found with another smartphone and that smartphone was not
6 the one that had the monitoring systems that were required.

7 As the condition stands, it's not the defendant who
8 decides when and how he can have a smartphone that has
9 internet access capability and then set up a hotspot where
10 he has internet in his room but he did that not only one,
11 but twice.

12 After having been granted the opportunity by the
13 Probation Officer, he took it upon himself to understand
14 that he was not going to comply by the conditions and that
15 he had a right to have that phone and that it was first what
16 he characterized as an Obama phone and then subsequently
17 which was clear, was not compatible with the system for
18 monitoring and then on the second occasion he had another
19 phone that was found in his possession.

20 In addition to that, we take it -- we asked the Court
21 to take into consideration the testimony of both Probation
22 Officers relating to the attitude and character of this
23 defendant while he is being given instructions, asked
24 questions relating to this supervision and the fact that he
25 has demonstrated a conduct where he is unsuperviseable and

1 does not want to follow the instructions that are being
2 provided.

3 THE MAGISTRATE: Which condition does having an
4 attitude violate?

5 MS. HERNANDEZ: Your Honor, not just that he's not
6 having -- the attitude is relating to the interactions that
7 he's having to not complying with the conditions of not
8 having electronic devices and --

9 THE MAGISTRATE: Okay, not following instructions
10 is clearly a condition.

11 MS. HERNANDEZ: Yes, Your Honor.

12 THE MAGISTRATE: But having an attitude, how is
13 that a violation of conditions of supervised release?

14 MS. HERNANDEZ: It's having an attitude towards the
15 supervision specifically. It's not just that you're having
16 an attitude but of being inquired about the devices that you
17 have and whether you're allowed to have certain devices or
18 not, that you have a negative attitude toward the
19 supervision process.

20 THE MAGISTRATE: Okay, so please tell me, in docket
21 429, which condition does having an attitude towards
22 supervision violate?

23 MS. HERNANDEZ: It relates to standard condition
24 number 13, which says, "you must follow the instructions of
25 the Probation Officer related to the conditions of

1 supervision" and that is one of the most basic conditions
2 that is imposed in terms that in order to be supervised,
3 there are conditions that need to be imposed and here's
4 the supervising officer who indicates and discusses also
5 what are these conditions and how they are not being
6 complied with.

7 We heard testimony from both Probation Officers as to
8 confrontation, defiance, being the defendant the one that
9 says, "ahora fallestes tu". You're the one that like, you
10 have one that you are wrong already." So it is relating to
11 that in terms of his supervision, Your Honor, and in terms
12 of that particular special condition but as indicated, the
13 interactions also all relate to the standard conditions
14 relating to him having access to the electronic
15 devices that have no monitoring system because that is
16 precisely what the defendant understands that he does not
17 want to follow instructions on and that he is entitled on
18 his own to decide when and how he can have a smartphone and
19 if confronted on that, then that is the way that he acts in
20 terms of defiance.

21 There was also testimony, although limited in some
22 manner by the Court about his interactions at the
23 Guarabi Center because that also relates to him following
24 instructions. He was placed there by Probation after having
25 completed his imprisonment term in relation to the prior

1 revocation in November of 2023 and he did have to follow the
2 conditions also related to that center and that was also
3 presented through the testimony, Your Honor. Duly
4 submitted.

5 THE MAGISTRATE: Thank you.

6 MR. LERMAN: May it please the Court, Judge Lopez.
7 We asked the Court not to find probable cause on any of the
8 six allegations that are before the Court and the first
9 point that we'd like to make before going through the six
10 conditions is that as this court construes these
11 allegations, like any allegation of wrong doing, the Court
12 has to start with the elements and insure that the Court is
13 not enforcing a vague law because a law that's
14 irreconcilably vague is subject to arbitrary enforcement and
15 this Court should construe a number of these conditions with
16 an eye toward a construction that's constitutionally viable
17 and promotes the goals of supervision.

18 I'd like to start with what's hopefully the easiest of
19 these allegations and that's the allegation of some improper
20 association. On the face of that, there's been no proof
21 presented that this person, Rivera Torres, is a sex
22 offender. There's been no proof of a friendship. There's
23 been no proof of the requisite mens rea possessed by Mr.
24 Negron.

25 Mr. Negron testified and we think that the Court should

1 find that credible that Mr. Negron didn't ask Rivera Torres
2 what his crime was and in any case, there's an issue of just
3 a basic notice. Any of these revocations need factual
4 notice under Rule 32.1b1b. That's a Constitutional
5 requirement.

6 There's not an allegation as to a specific deed that
7 we're defending against. There's an allegation that these
8 two gentlemen left a structured housing environment
9 together. I don't think there's no dispute that they were
10 on a Guarabi provided transportation on this occasion. If
11 this occasion is during the time that Mr. Negron was under
12 supervision.

13 Anything before the Court has to be, in order to be a
14 violation, has to be a violation of conditions that were
15 provided when Mr. Negron was released on November 9th and
16 so, there should be no probable cause for the association
17 condition.

18 Employment, there's an allegation in testimony at one
19 point that the officer stated and I don't have the exact
20 wording, but the officer stated that he offered a number of
21 alternatives to Mr. Negron.

22 Mr. Negron was in a housing shelter temporarily, a
23 temporary shelter, and the Court has already heard and has
24 in the record un-rebutted information that Mr. Negron had
25 applied to longer term housing and had been accepted.

1 So, if this wasn't completely excused by Probation
2 which on the face of the condition, a lack of employment can
3 be excused. The United States has a bad history with
4 vagrancy laws that punish somebody for not working and the
5 only thing that protects this condition from that history is
6 construing it strictly and so the Court would really have to
7 hear something a lot more precise than other than Mr. Negron
8 was told that he could, you know, go to town or take a bus
9 somewhere and apply for more jobs, other than go through
10 this process and he was also engaging, there's testimony and
11 I'll discuss that more when we get to the first allegation
12 of truthful answering and the allegations related to
13 consenting to installation of the systems.

14 Mr. Negron engaged with this process. There's
15 testimony that that engagement wasn't perfect. Some of us
16 in these hearings sometimes we get animated when we think
17 that we're right about something and Mr. Negron has been
18 through some difficult situations.

19 He doesn't excuse that and yet it provides context to
20 how the Court evaluates whether there's probable cause to
21 any of these conditions.

22 So, our position is that there's no probable cause for
23 this working condition either because it was excused or it
24 was simply, there's an issue of necessity whether it's
25 essentially a de minimis charge.

1 All of these charges have to be viewed with an eye
2 toward pragmatic interpretation and they have to allege and
3 prove a fact of consequence related to them.

4 I'd like to address charge one, what's written on the
5 accusatory document as standard condition number 4, together
6 with special condition what's written in the accusatory
7 document 439 is number 31, about the consent to install
8 systems and number 32, about the prohibition of devices
9 unless they can be monitored appropriately by Probation.

10 I'd like to address those together. We've heard testimony
11 about a number of dates with some pretty large gaps in
12 between and we heard testimony from the Probation Officers
13 about what sounds like an emotionally taxing interaction on
14 November 15th.

15 What was added without dispute from the government by
16 Mr. Negron is that after the November 15th meeting in his
17 bedroom, that he went downstairs, he talked to the Probation
18 Officer, he talked to the social worker in the home.

19 The Probation Officer said, "give me two days and I'll
20 work on this and I'll get your phone activated" because
21 Probation recognized, even though these tools aren't perfect
22 and we don't have -- what the Court doesn't have is any
23 documentation before it about what this third party company
24 demands.

25 What is a compatible phone? How does this process go

1 forth? What arrangements were made by Probation to get
2 these phones activated but nevertheless, we have this
3 meeting going on on November 15th and we have this follow-up
4 from the attorney who represented Mr. Negrón in his last
5 revocation which is under appeal and we have this follow-up
6 and he says, "oh, okay."

7 So this phone that Officer Lozada confiscated is not
8 completely contraband. It's described as contraband but
9 it's provided back with part of this process because again
10 and we have to recognize the defense of necessity is pretty
11 well placed in revocations and the concept of a de minimis
12 violation is pretty well placed because somebody has to get
13 a device.

14 Does Probation go shopping with somebody who needs to
15 purchase a device? Do they get a window of time? Is it
16 like when CESCO gives you a temporary permission to take
17 your car to get it to pass it through the emissions check?
18 We don't know, we don't know what that process is and I
19 don't think, based on the testimony.

20 I think the testimony supports a pretty reasonable
21 inference that the people doing the day to day probation
22 work don't quite understand this and we see a lot of
23 confusion and we see Probation Officer Lozada, he's
24 undergone courses.

25 I don't completely understand what these courses were

1 but he's undergone courses to supervise people who suffered
2 convictions of sex offenses. This is a sex offense that is
3 from 14 years ago and yet these conditions apply and
4 technology changes over time.

5 So, if somebody has a phone that's an inexpensive phone
6 that's by a Chinese manufacturer and that doesn't fall under
7 what the private company will certify and monitor, well,
8 apparently that doesn't cover it.

9 What's indicated here in terms of monitoring which I
10 think is subject To vagueness and pre-arbitrary enforcement
11 is, we have an allegation that says and I'm just looking at
12 the accusatory document but in the sixth of these conditions
13 it says, it prohibits possession or use of any of these
14 computers or phones except with systems that will enable
15 Probation to monitor and filter internet accessing.

16 Okay, we've had Probation take phones. The Probation
17 Officer took the phones, took them to his home, did the
18 inspection. We don't have any information that it's not
19 consistent with the protocols.

20 They sound like some pretty unusual protocols that he
21 has to take into his home and there's not somebody that's an
22 expert on computers, dealing with them and once that's
23 completed, we have a return of the phone to Mr. Negron.

24 Whether that falls under the letter of these conditions on
25 which dates the government, it's unclear whether they allege

1 an on-going violation through all these dates. It
2 definitely wasn't a violation, it definitely wasn't in
3 violation status when Officer Lozada gave Mr. Negron back
4 the phone.

5 If he gives Mr. Negron the phone, then he's not
6 committing a violation because that's provided to him. Was
7 it violation status once the company said, "you know what,
8 it doesn't work for us." Is there a list of phones that
9 work for them, we don't know.

10 Truthfully answering questions, you have some various
11 allegations. We ask that the Court not give any weight to
12 the unsworn narrative that the government referenced at
13 document 39 for the reasons we stated in our objection.

14 We ask that the Court not give any weight to the issues
15 that -- the testimony where we objected on confrontation
16 grounds because there's especially, after hearing the
17 questions, there's no basis for applying the 32.1 Valentin
18 test to admit that stuff and it didn't show any markers of
19 reliability.

20 So, we have some back and forth and we have Mr. Negron
21 who was pretty clear that certain conditions don't apply to
22 him and the very start of the interaction is, "I'm going to
23 have you urinate in this cup. We're going to the bathroom
24 together. I'm going to close the door and I'm going to
25 watch you urinate in this cup and I'm going to test it" and

1 he said, "you know what, that invasion of personal privacy
2 is not among my conditions." So, let's talk about the other
3 ones. Does he need to respond with more tact? Yes, and he
4 wants to sit down and go through a mediation process, if
5 possible, with Probation so that they can work out a mutual
6 solution and figure out how this monitoring condition can be
7 applied.

8 Is that a violation? Is any of that conduct in these
9 conversations that happened in and outside Mr. Negron's room
10 a violation in an important respect? We respectfully ask
11 the Court to find that the conversations discussed and the
12 alleged conduct that's been talked about today, is not
13 probable cause of any of these violations and we thank this
14 Court for the opportunity to provide an impartial
15 preliminary hearing and independent of any finding of
16 probable cause, we'd just like to reiterate the most
17 important thing to Mr. Negron, is that there's a resolution
18 reached so that he can have basic access to the internet for
19 the needs that he and pretty much everyone else in 2024 have
20 for that access. Thank you, Your Honor.

21 THE MAGISTRATE: Thank you. This is my decision
22 regarding this particular matter. I will start by saying
23 this very briefly. Although some of the matters that I have
24 heard today and seen today during this hearing, I believe
25 are relevant regarding the dispute between the parties as to

1 matter of bail, I am going to refrain from making any
2 expressions or any opinions because I believe that I'm not
3 with jurisdiction at this moment.

4 There is a notice of appeal that is pending before
5 Judge Besosa. So, I am not going to make any expressions
6 one way or the other as to that particular matter out of
7 respect of the pendency of that appeal.

8 MR. NISKAR: May I, Your Honor, if I can just add,
9 even if I think I would have to research that issue, so I'm
10 not saying that I disagree but I checked the way I generally
11 understand especially if a case is on appeal to the Circuit,
12 a lower court can issue an indicative ruling and we could
13 provide the Court with that indicative ruling if the Court
14 does have a position.

15 THE MAGISTRATE: Well, at this moment, again out of
16 respect for the process, all I'm going to say is that I
17 believe that some, I'm not saying everything but some of the
18 matters that I've heard here today I believe do shed some
19 light on the areas of, for example, risk of flight and
20 danger to the community but out of respect for the fact I
21 also notice on the docket that Honorable Judge Besosa has
22 already scheduled a hearing regarding that particular
23 matter.

24 So I think that the most prudent course of action is
25 for me to refrain from expressing an opinion one way or the

1 other as to that particular matter out of respect for the
2 fact that that matter is right now under the consideration
3 of Honorable Judge Besosa.

4 Now, having said that, having said that, let's now
5 address the matter at hand and I would like to start with
6 some procedural matters or at least threshold matters.

7 As I said at the beginning of the hearing, I have
8 proceeded with this preliminary revocation hearing because
9 at least as of today I'm not aware of any order from either
10 the Court of Appeals from the First Circuit or from Judge
11 Besosa staying the proceedings.

12 Now, as to the threshold matters, I would like to
13 address several matters. First, either directly or
14 indirectly during the hearing there were some questions
15 raised as to whether a Probation Officer had or didn't have
16 the authority to conduct home inspections and I believe that
17 the officers testifying distinguished a home inspection from
18 a search because a home inspection, according to their
19 testimony, they can look but they cannot touch or move
20 things.

21 They cannot touch or move things, for if they want to
22 touch or move things, then they would need reasonable
23 suspicion of contraband or a violation et cetera in order
24 for them to go into a search mode.

25 So, clearly the Probation Office does not consider to

1 be the same thing, a home inspection or a search. Now, the
2 question is, can a Probation Officer conduct a home
3 inspection and I conclude in the affirmative, yes, the
4 Probation Officer can and, for example, in docket 429 the
5 Judgement in docket 429 on page 5, standard condition number
6 6, it indicates, "you must allow the Probation Officer to
7 visit you at any time at your home or elsewhere and you must
8 permit the Probation Officer to take any items prohibited by
9 the conditions of your supervision that he or she observes
10 in plain view."

11 Well, that is home inspection, the authority to conduct
12 a home inspection, not a search which is different. For a
13 search there needs to be -- there's a different requirement.

14 So, I would like to start by saying that I do make a
15 finding that the Probation Officer did have the authority to
16 conduct home inspections and there's nothing in these
17 conditions that say that home inspections can only be
18 conducted once, that it can only be one day.

19 A home inspection can be conducted more than one day.
20 So, I wanted to at least address that issue from the outset.

21 Now, there's another threshold issue that I wanted to
22 address before I go into the specific alleged violations and
23 at some point during the examinations of the witnesses, it
24 came to there was a line of questions along the lines of
25 whether on the 15th of November of 2023, that was the first

1 day that Mr. Negron was able to meet Officer Lozada and
2 whether that was the first day that he actually, they sat
3 down and went over the conditions and whether Mr. Negron
4 signed them on that day.

5 Well, I don't think those questions are irrelevant
6 because in order for somebody who is under supervision, that
7 person needs to first be aware of what are the conditions.

8 Okay, and perhaps an argument can be made, well, there
9 is no evidence that, for example, he signed the conditions
10 before the 15th of November or that the conditions were
11 explained to him before the 15th of November or that he was
12 aware of the conditions before the 15th of November.

13 However, regardless of the exact date of when Mr. Negron
14 signed those conditions, his testimony here in court, Mr.
15 Negron's testimony strongly suggests that he was well aware
16 of his conditions.

17 For example, I'll mention just a few. I'm not going to
18 give here an exhaustive list. For example, Mr. Negron
19 testified that as to the matter of whether a urinalysis
20 could be done because at least he was under the impression
21 that Officer Lozada wanted to conduct a urinalysis, that
22 that was not one of his conditions.

23 Well, actually it turns out that he's right. When you
24 look at page 6 of docket 429, where it says special
25 conditions of supervision and I read, "Mr. Negron Cruz shall

1 continue under the same conditions previously imposed on him
2 except that the condition of drug testing is eliminated."

3 Well, that suggests somebody who is well aware of his
4 conditions. Let me mention another example. During his
5 testimony Mr. Negron also testified that when Officer Lozada
6 asked to enter the room, that he allowed him to enter the
7 room because otherwise he felt that he would be in violation
8 of his conditions of supervised release.

9 Well, it turns out that once again Mr. Negron is right
10 under standard condition number 6, which I read a few
11 moments ago on page 5 of docket 429, he would have to give
12 permission for Officer Lozada to conduct a home inspection.

13 I'll give one example, one additional example of Mr.
14 Negron's testimony but again, I don't mean here to give an
15 exhaustive list. That's not the intent. I'm just trying to
16 provide some context as to my conclusion.

17 Mr. Negron testified that when asked by the Probation
18 Office, he always provides the password or passcode to the
19 electronic device because if he refuses, then that would be
20 a violation.

21 Well, if you look at special standard condition number
22 31 and I'm only going to read -- I'm not going to read the
23 entire special condition but I will mention a few. It says,
24 I'm sorry, just one portion. I'm not reading the entire
25 special condition. It says, "Mr. Negron shall immediately

1 notify --" I'm reading from page 2, docket 429, special
2 condition number 31.

3 Again I'm not reading the entire special condition,
4 only the pertinent portion. "Mr. Negrón shall immediately
5 notify the Probation Office upon registration for access to
6 any website or service that allows for communication with
7 other users, uploading or downloading files, posting of any
8 material. Notification shall include the site address, user
9 name, password, pseudonyms and log ons."

10 Well, Mr. Negrón is right once again. That shows that
11 he was actually quite knowledgeable of what his conditions
12 were.

13 So, I do make a finding that the defendant was aware of
14 his conditions of supervised release when the alleged
15 incidents in controversy transpired. Now, the question is,
16 did he comply with them? Were there any violations to his
17 terms and conditions of supervised release?

18 I'm going to start with the allegation of the special
19 condition that the defendant shall not associate with
20 individuals with whom he has previously traded illicit
21 material. Well, I don't have any evidence here of Mr.
22 Negrón associating with somebody with whom he has traded
23 illicit material.

24 Now, the condition continues by saying that he shall
25 not associate with a family member or friend under criminal

1 justice supervision for a sex offender crime.

2 Now, let's stop right there. There has been testimony
3 that the defendant has been associated with a subject by the
4 name of Jose Rivera Torres and there has been some
5 testimony, at least from one of the Probation Officers
6 that this person is a sex offender.

7 Now, but there are several problems here with this
8 allegation that need to be addressed. The first one is if,
9 for example, on the date that allegedly they left together
10 Guarabi in the bus, well, if there's a process at Guarabi,
11 where they have to check and request permission to leave?
12 Well, if Guarabi knows that these two persons are two sex
13 offenders, why did Guarabi allow them to leave together in
14 the same bus? I have not received any explanation for that.

15 The second thing is this? What evidence is there here,
16 what evidence has been introduced that Mr. Negron was aware
17 that Mr. Rivera was convicted of a sex offense?

18 What evidence have I heard here today about that?
19 Nothing. There has been evidence that Mr. Rivera is
20 convicted of a sex offense, yes. I believe that at least
21 one of the two Probation Officers testified to that effect
22 but the question is, what testimony has been introduced here
23 today to establish that Mr. Negron was even aware that Mr.
24 Rivera was convicted of a sex offense? I haven't heard
25 anything here today to that effect.

1 But here comes the third reason and perhaps the most
2 baffling one, or the third factor. The U.S. Probation
3 Office places both Mr. Negron and Mr. Rivera to live in the
4 same place.

5 So, the U.S. Probation Office puts two sex offenders,
6 two persons who have been convicted of sex offenses to live
7 in the same place and now they allege that Mr. Negron is
8 unlawfully associating with somebody who lives in the place
9 that Probation put right there. Frankly, this sounds to me
10 like the left hand doesn't know what the right hand is
11 doing.

12 Yes, Mr. Negron admitted that they both went out, I
13 believe to an Econo grocery store. I don't even know the
14 exact day because I don't recall any specific date given
15 but, yes, he admitted that but that does not cure any of the
16 three problems that I have just mentioned here and for that
17 reason, I do not find probable cause that Mr. Negron
18 unlawfully associated with a convicted sex offender.

19 Now, let us continue with the analysis. The matter
20 about the defendant not being working full time. Well, I
21 think that Mr. Negron was quite candid that he was
22 unemployed. He testified to that effect.

23 Now, there are two components here to this analysis.
24 On the one hand I frankly don't know since when this issue
25 of lack of compatibility between a device and the phone and

1 the monitoring system of Probation is there, I don't know.
2 I don't know if this is a recurring problem, a long term
3 problem, a systemic problem or an isolated problem that has
4 only happened here in this case. I don't know and I'm not
5 going to speculate.

6 If it's a systemic problem, well that there's a
7 constant problem of compatibility, well, then this is
8 something that needs to be evaluated deeper because then for
9 all practical purposes, a defendant would never be able to
10 have a phone.

11 Because if there's a constant problem of lack of
12 compatibility, well then Probation will never be able to
13 monitor. However, I don't know, maybe it's not a systemic
14 problem. Maybe it has been working fine with many other
15 people but with this particular defendant and his device, it
16 hasn't.

17 Well, this perhaps is more than anything else, food for
18 thought as to how to deal with this condition of monitoring,
19 putting in monitoring on a device. However, I do make a
20 finding of probable cause that the defendant has not met
21 with this condition and this is the reason why.

22 The Probation Office offered Mr. Negron two
23 alternatives. One of them was to do supervised internet
24 with the case manager. Well, the other alternative was to
25 go out in person and look for a job.

1 Well, I understand that particularly nowadays, that
2 could present an inconvenience, a hurdle in trying to be
3 able to find a job, not being able to do it from the
4 internet.

5 It might be easier to look for a job if you have access
6 to the internet. I understand that and I empathize with
7 that but the reality is that at least until the problem of
8 the monitoring of the phone and the internet have been
9 solved, well, at least in the meantime the defendant had
10 been offered alternatives, perhaps inconvenient but they're
11 nonetheless alternatives.

12 Go out in person to look for a job or otherwise do
13 supervised internet with the case manager, internet search
14 with a case manager and the defendant refused both
15 alternatives.

16 So, for those reasons, I do make a finding of probable
17 cause that the defendant failed to meet the condition which
18 appears, a standard condition which although the motion says
19 number 3, I believe that that is a typographical error. I
20 believe that if you look at the conditions, it's number 7.
21 It's standard condition number 7 but in any event, the
22 substance, the wording of the allegation is nonetheless
23 there and I do make a finding of probable cause that Mr.
24 Negrón has failed to comply with standard condition number
25 7. That is the one about seeking full time employment.

1 Nonetheless, I do want to say as a side note that I
2 understand the difficulties of trying to find a job just
3 going out in person and without having a car. That's not
4 easy. That's not easy and I understand Mr. Negron, how
5 inconvenient that is for you. I'm not saying that it is
6 ideal.

7 I would have much preferred that the compatibility
8 issue of monitoring had been solved. But even then they
9 offered you an alternative and that was supervised internet
10 searches with a case manager. So, I do make a finding of
11 probable cause as to that particular violation.

12 Now, let us proceed. I will proceed now with special
13 condition number 32. I'm looking specifically in docket
14 429, page 2, special condition number 32 and I quote. It
15 reads as follows: "He does not possess or use a computer,
16 cellular telephone or any other device with internet access
17 and capability at any time or place other than those with
18 systems that will enable the Probation Officer or his or her
19 designee to monitor and filter any internet accessing."

20 Well, I would like to start by the following. Much has
21 been said here about smart T.V. and an Xbox but frankly the
22 motion filed by the Probation Office doesn't really make a
23 big deal about that at all. In fact, I'm not even sure that
24 it even mentions it.

25 The motion filed by the Probation Office, however, does

1 allude specifically to three items, a black Android BLU,
2 smartphone with access to the internet and charger. Number
3 two, a black Franklin Wireless hotspot and charger and
4 number three, a score 17 touch pad device. Says provided
5 while under BOP custody.

6 Well, I will start backwards. I'm going to start with
7 the touch pad, the one that was for our BOP. I believe that
8 the testimony here today was that it did not have access to
9 the internet and I don't recall any testimony specifically
10 regarding that particular tablet about any internet
11 accessing capability.

12 So, as to item number 3, yes, there was evidence that
13 he had it but the condition is about items with internet
14 accessing capability, okay, and that was not the testimony.
15 Yes, there was testimony here about him having the device,
16 there was but not about having internet accessing
17 capability.

18 So, as to the touch pad device, I do not find probable
19 cause. However, I do make a finding of probable cause that
20 the defendant violated special condition number 32 for
21 possession of the Android smartphone and the black wireless
22 hot spot and their respective chargers. As to that, I do
23 make a finding of probable cause.

24 Now, there's something else that needs to be said
25 because remember that we had two different interventions --

1 interventions is not the right word. Please allow me to
2 correct myself.

3 Two visits. There was one on the 15th of November but
4 then there was another visit down the road regarding I
5 believe it was on the third of January of 2024, and here
6 there were three devices but two -- one of the three phones
7 would actually provide internet to the other two.

8 Well, I'm not going to split her hairs here. Whether
9 one phone was acting as a sort of a hot spot for the other
10 two phones, it doesn't matter. Even if the defendant only
11 owned one of the three phones and the other two belonged to
12 somebody else, the fact is regardless of whether the one
13 that Mr. Negron had in January of 2024, regardless of
14 whether it was the one that belonged to -- whether the one
15 that belonged to him had access on its own to the internet
16 or was relying on the other, on another phone to give him
17 access to the internet, the bottom line is that the phone
18 that he had, had access to the internet, either directly on
19 its own or by means of another phone that was operating as a
20 hot spot.

21 So, to sum it up, regarding special condition number
22 32, I do make a finding of probable cause that special
23 condition number 32 was violated for on the 15th of
24 November, possession of an Android smartphone, also for
25 possession of a hot spot and their respective chargers and I

1 also make a finding that regarding the January 2024, at
2 least one of the three phones, at least one of the three,
3 had access to the internet, was in his possession and either
4 access to the internet on its own or by relying on the
5 connectivity of another phone.

6 These findings are also directly related to special
7 condition number 31, which also appears in the motion.
8 However, I have to be careful here with special condition
9 number 31 because special condition number 31 as written in
10 the motion, contains a lot of different information and I
11 think that we have to be careful here because, for example,
12 the last sentence I'm reading specifically on docket 439
13 special on page 2 of the paragraph that says, Special
14 Condition number 31. The last sentence says Mr. Negrón
15 shall contribute to the cost of the monitoring service based
16 on his ability to pay. Well, if he's unemployed, he has no
17 ability to pay.

18 So, I don't think that it would be fair to find -- to
19 make a finding of probable cause of him violating special
20 condition number 31 for failure to contribute to the payment
21 of the monitoring device.

22 You see but that's only one segment of special
23 condition number 31. Special condition number 31 and I'm
24 going to focus now on the more relevant portion which I
25 believe I read before. It says, "Mr. Negrón shall

1 immediately notify the Probation Officer upon registration
2 for access to any website or service that allows for
3 communication with other users uploading or downloading of
4 files, posting of any material, et cetera. That a vacation
5 shall include the site address, user name, password,
6 pseudonym and logins, but it is not limited to social
7 networks, cloud sources, message boards, et cetera."

8 Well, Mr. Negron had to first request permission in
9 advance to have a device connected to the internet, not
10 after the fact but in advance and but even if he had gotten
11 the device connected to the internet or with access to the
12 internet, he must have immediately notified the Probation
13 Office of any passwords or log ons, et cetera and he did
14 not.

15 Now, I heard testimony along the lines of "well, this
16 was just an emergency smartphone." Well, it's
17 understandable for somebody to want to have a smartphone for
18 emergencies, however, there is nonetheless still a
19 requirement. There's still a requirement and there's
20 nothing in these special conditions that says, "well, you
21 can do that if it's an emergency device. If it is not an
22 emergency device you don't have to do it." Well, but that's
23 not the way the conditions are written.

24 So, I do make a finding of probable cause that the
25 defendant has violated special condition number 31 but only

1 in the portion that I have indicated. Okay.

2 Standard condition number 13, I believe this condition
3 is on page -- well, actually it's repeated twice in docket
4 429. If you look at docket 429, standard condition number
5 13 on page 5, it says, "you must file the instructions of
6 the Probation Officer related to the conditions of
7 supervision" and but if you look at page 2, well, standard
8 condition number 13 is repeated again on page 2.

9 MR. NISKAR: Just for clarification, page 2 is
10 listing the violations that were enumerated in the previous
11 judgement prior to November 9, 2023. So, those violation
12 numbers on page 1 of 6 and 2 of 6 that Judge Besosa found
13 violations of 4, 6, 7, 13, 31 --

14 THE MAGISTRATE: You're correct, you're correct.
15 I stand corrected. Thank you, AFD Niskar. But nonetheless
16 on the motion filed by the Probation Office, they do bring
17 to the attention of the Court standard condition number 13
18 and if you look at the standard conditions, you can find
19 them also on page 5. But your clarification is duly noted
20 as to standard condition number 13.

21 MS. NISKAR: They would also relate to 31 and 32 as
22 well.

23 THE MAGISTRATE: Well, I understand what you're
24 saying but you also need to look at the last page of page 6.
25 It says special conditions of supervision. It says, "Mr.

1 Negrón shall continue under the same conditions previously
2 imposed on him except the condition regarding drug testing."

3 So, that incorporates the special conditions. Okay,
4 so, but nonetheless, I do appreciate Mr. Niskar you bringing
5 this to my attention but by virtue of the language on page
6 6, those special conditions are part of his current
7 conditions of supervision.

8 Now, as to following the instructions of the Probation
9 Officer, I am going to -- I do make a finding of probable
10 cause that that condition was violated but let's try to
11 distinguish one thing from the other.

12 Simply having an "attitude" however you want to define
13 that, that in and of itself is not necessarily, does not
14 necessarily arise to the level of failure to follow the
15 instructions of a Probation Officer.

16 Of course, we always hope that there by good
17 communication and good attitude from both the Probation
18 Officer towards the person under supervision and the other
19 way around, from the person under supervision to the
20 Probation Officer. But in the end what we want to know is,
21 did he follow the instructions, yes or no, and on more than
22 one occasion he did not do so.

23 You know, he was offered alternatives to seek for a
24 job, he did not do so. He was told about not being able to
25 access, have devices with access to the internet and yet in

1 January of 2024 he was found again, yet with a device with
2 access to the internet.

3 So, I do make a finding of probable cause that standard
4 condition number 13 has been violated and I think that the
5 one that remains is really standard condition number 4 and
6 it says "you must answer truthfully the questions asked by
7 your Probation Officer."

8 Well, here's perhaps of all the ones that I've had to
9 analyze, the one that is a little bit of a closer call. I
10 think that in some areas there has been a little bit of a
11 misunderstanding. For example, the whole thing about the
12 Obama phone. Well, I think that Mr. Negron gave a
13 reasonable explanation here today on the stand.

14 You know, in other words, it's not that he was trying
15 to be sarcastic or defiant to Officer Lozada, when he said,
16 "this is an Obama phone." He said he didn't mean that the
17 phone belonged to former President Barack Obama. What he
18 meant was that this was simply a phone that was provided
19 presumably under some kind of program that allows for either
20 free phones or phones with access to the internet or
21 something along those lines.

22 So, again I don't -- I mean that particular incident,
23 for example, doesn't strike me as something where the
24 defendant was trying to be purposely defiant or was trying
25 to be untruthful or even sarcastic to Officer Lozada.

1 On the other hand, there are other things that are more
2 problematic. Perhaps the one that would be of concern among
3 other incidents that we're testifying here today is that at
4 the beginning on November 15, 2023, although eventually the
5 defendant did acknowledge that he had a smartphone, that was
6 not forthcoming.

7 I believe that at the beginning there was a denial but
8 then eventually there was an acknowledgment. So, I do make
9 a finding of probable cause that defendant violated standard
10 condition number 4, although I think that -- I say this with
11 a word of caution.

12 Let's put it this way, compared to other violations
13 that I've seen here, the evidence appears to be stronger
14 regarding the other violations than this one in particular.

15 I am concerned that some of the incidents appear to be
16 more of misunderstandings than anything else. However,
17 because of what I previously explained, particularly
18 regarding the November 15 incident, I do make a finding of
19 probable cause as to that matter.

20 Therefore, this matter is respectfully referred to the
21 attention of Honorable Judge Besosa for a final revocation
22 hearing for the reasons that I have indicated.

23 I do make a finding of probable cause as to violations
24 to standard condition number 4, standard condition number 7,
25 standard condition number 13, special condition 31 and

1 special condition 32 with the specifics that I articulated.

2 I do not make a finding of probable cause regarding
3 special condition number 24 regarding the unlawful
4 association. As to that I do not make a finding of probable
5 cause.

6 This matter is referred to the attention of Judge
7 Besosa for a final revocation hearing and that is the
8 decision of the Court.

9 Counsel, I believe that you have handed already the
10 exhibits but if by any chance any of you has any of the
11 exhibits of this hearing, please make sure that they remain
12 here with the Courtroom Deputy Clerk before you exit. This
13 concludes these proceedings. You may withdraw.

14 MR. NISKAR: Thank you, Your Honor.

15 MR. LERMAN: Thank you, Your Honor, have a nice
16 evening.

17 (The hearing ended at 6:03 p.m.)

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1 U.S. DISTRICT COURT)

2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 228 pages
5 is a true and accurate transcription to the best of my
6 ability of the proceedings in this case before the Honorable
7 Magistrate Judge Marcos E. Lopez, on February 12, 2024.

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12 S/Boabdil Vazquetelles

13 Court Reporter

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